

INTERNATIONAL COURT OF JUSTICE

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

(REQUEST FOR ADVISORY OPINION)

WRITTEN COMMENTS OF THE HASHEMITE KINGDOM OF JORDAN

25 OCTOBER 2023

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INTRODUCTION

1. The present Written Comments consider the Written Statements of other States and international organizations participating in the advisory proceedings, and address some of the issues raised therein.
2. The Hashemite Kingdom of Jordan ('Jordan') reaffirms all that is said in its Written Statement of 25 July 2023. The fact that Jordan does not comment on all that others have said does not mean that it necessarily agrees. Only selective points are addressed below.
3. These Written Comments are divided into four sections. **Section I** responds to the small number of States which have argued that the Court should exercise its discretion so as not to respond to the questions put by the General Assembly, or should do so only to a limited extent. Jordan notes that no State has questioned the jurisdiction of the Court.
4. Some States, while not arguing that the Court should exercise its discretion and decline to answer the questions, suggest nonetheless that the Court ought to be cautious and not render an opinion that may be detrimental to the negotiating framework between Palestine, Israel and other interested parties. **Section II** addresses this suggestion.
5. **Section III** addresses Question (*a*), on which most of the Written Statements have arrived at similar conclusions.
6. **Section IV** comments on the responses of certain States to Question (*b*).
7. The Written Comments end with Jordan's **Conclusions**, which remain unchanged from the Written Statement.

SECTION I

THE COURT SHOULD ANSWER THE QUESTIONS ASKED BY THE GENERAL ASSEMBLY

8. As explained in Jordan's Written Statement, the Court has jurisdiction to give the advisory opinion requested by the General Assembly in its resolution 77/247 and there are no compelling reasons to decline to do so¹. The Court should thus answer the questions asked by the General Assembly, in line with its constant position that answering a request for an advisory opinion "represents its participation in the activities of the [United Nations] Organization, and, in principle, should not be refused"².

9. None of the 57 statements filed with the Court maintains that the Court lacks jurisdiction. This section will address the arguments raised by a few States which have argued that the Court should nevertheless refrain from exercising its jurisdiction and decline to answer the questions asked by the General Assembly. Jordan stresses at the outset that none of the reasons invoked would justify a refusal to answer the questions asked by the General Assembly.

10. First, it has been advanced that the questions contained in the request are formulated in a biased manner, as they "point a finger at one side only" and "ignore compelling evidence of ongoing official Palestinian incitement to violence against Jews and Israelis"³. It is also argued that "answering will entail assessing [one] State's conduct devoided (sic) of the *greater whole*, which includes reasons – particularly actions from the other party to the underlying dispute – that have motivated many of the said acts, legislation, policies and practices without analysing the conduct of the other party"⁴. Furthermore, it is suggested that "the Court cannot be confident that it would have a complete or accurate evidential picture before it"; that answering

¹ Written Statement of Jordan, Part One, paras. 2.1-2.17.

² See *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 113, para. 65, referring to *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, pp. 78-79, para. 29; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 416, para. 30; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 156, para. 44.

³ Written Statement of Israel, pp. 1-2. See also Written Statement of the United Kingdom, para. 76.2; Written Statement of the United States, para. 3.13.

⁴ Written Statement of Guatemala, para. 38. See also Written Statement of the United Kingdom, para. 67.1.

the questions posed “would require the Court to embark on a fact-finding mission ... to which the Court is unsuited in the exercise of its advisory function”; and that “the Court would risk the integrity of its judicial function if it were to proceed without Israel’s full participation”⁵.

11. None of these arguments should be upheld by the Court⁶. First of all, many of the facts are undisputed: there is no denying, for instance, that Israel’s 1980 Basic Law refers to Jerusalem as the “complete and united” capital of Israel⁷, nor that its 2018 Basic Law refers to “the development of Jewish settlement as a national value” and affirms that the State “shall act to encourage and promote its establishment and consolidation”⁸.

12. Moreover, the fact that an interested State may choose not to share information it considers relevant to the analysis of the legal questions asked by the General Assembly cannot in itself be an obstacle to the Court answering the request. In *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (the ‘2004 Opinion’), the Court rejected Israel’s argument that “it would be forced to speculate about essential facts and make assumptions about arguments of law”, “particularly since Israel alone possesses much of the necessary information”, which allegedly made it “impossible to clarify” factual issues⁹. Instead, the Court made clear that what is decisive in these circumstances is:

“whether the Court has before it sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of facts the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character”¹⁰.

13. As Jordan and many other participating States have pointed out, there is more than ample evidence in the record before the Court¹¹, as well as in the public domain, for the Court

⁵ Written Statement of the United Kingdom, paras. 66.3, 67.1, 68.

⁶ See, similarly, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 160-162, paras. 55-58, and pp. 163-164, paras. 63-64.

⁷ “Basic Law: Jerusalem, Capital of Israel”, 30 July 1980, Article 1.

⁸ 2018 Basic Law: Israel – The Nation State of the Jewish People (available at: <https://m.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf>, accessed on 5 October 2023).

⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 161, para. 55.

¹⁰ *Ibid.*, p. 161, para. 56, referring to *Western Sahara, I.C.J. Reports 1975*, pp. 28-29, para. 46.

¹¹ Written Statement of Jordan, Part One, para. 2.11; Written Statement of the African Union, para. 51; Written Statement of Bangladesh, para. 7; Written Statement of Chile, paras. 25-27; Written Statement of Luxembourg,

to make an informed assessment of the facts underlying the request. In particular, as the Court observed in the 2004 Opinion, many documents issued by the Israeli Government on the matter of Israel's security concerns are in the public domain¹². The present written comments stage also provides all States and international organizations in possession of relevant information with an opportunity to present it to the Court.

14. Finally, in response to the concerns expressed by one State about the evidence so far provided¹³, it suffices to say that it falls within the Court's judicial function to assess its relevance and probative value, a task from which it has never shied away¹⁴.

15. Secondly, a few States have suggested that the questions as formulated by the General Assembly are prejudicial as they assume a violation by Israel of its obligations under international law¹⁵. However, the formulation of the questions adopted by the General Assembly is in line with the Court's conclusion, in its 2004 Opinion, that the construction of the wall by Israel, along with other related measures, "severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right"¹⁶. It is also in accordance with the Court's finding that "occupied settlements in the Palestinian territory have been established in breach of international law"¹⁷, and that for Israel to integrate these settlements and their means of access and keep the wall in place would create *faits accomplis* on the ground "tantamount to *de facto* annexation"¹⁸. Moreover, the questions put to the Court do nothing but acknowledge the Court's finding that "from 1967 onwards, Israel took a number of measures aimed at changing

para. 17; Written Statement of Malaysia, para. 19; Written Statement of Namibia, para. 16; Written Statement of the Russian Federation, para. 24; Written Statement of Saudi Arabia, para. 21; Written Statement of Switzerland, paras. 18-19.

¹² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 162, para. 57.

¹³ Written Statement of the United Kingdom, para. 67.3.

¹⁴ See, for example, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, pp. 74 ff, paras. 180, 190-191, 196-197.

¹⁵ See in particular Written Statement of Israel, p. 1; Written Statement of Fiji, pp. 5-8; Written Statement of the United Kingdom, para. 76.1.

¹⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 184, para. 122.

¹⁷ *Ibid.*, p. 184, para. 120.

¹⁸ *Ibid.*, p. 184, para. 121.

the status of the City of Jerusalem”¹⁹ and that Israel took “illegal measures” affecting the demographic composition of Jerusalem²⁰. Regrettably, these assessments still hold true today; the current request is not based on unfounded and prejudicial assumptions but rather on clear earlier findings of breaches of international law by the principal organs of the United Nations, including the Court itself.

16. In any event, the questions as formulated in the request do not preclude the Court from reviewing the legality of Israel’s conduct in all relevant aspects²¹: the Court is always free “to broaden, interpret and even reformulate the questions” put to it in a request for advisory opinion²². Jordan notes that none of the participating States or international organizations has simply “presumed” that Israel has violated its obligations under international law. To the contrary, they have provided detailed analysis of Israel’s conduct before assessing the legal consequences of any breach. Jordan itself did so in its Written Statement²³.

17. Thirdly, some States have argued that the request is of a contentious nature and have suggested that Israel’s lack of consent to the Court’s jurisdiction should lead the Court to decline to exercise its advisory function. The United States, for example, suggests that “the questions referred in this proceeding implicate the principle of consent to judicial settlement to a far greater extent than in *Construction of a Wall*, by inviting the Court to address issues that form the very subject matter of the dispute”, “including the status of the territory in question”²⁴. Fiji suggests that “an Advisory Opinion on the legal consequences of the alleged infringements of international law would go to the very core of [the political and armed conflict between Israelis and Palestinians] and require the Court to settle law in relation to the whole conflict”²⁵. The United Kingdom, for its part, maintains that “the advisory procedure offers insufficient

¹⁹ *Ibid.*, p. 166, para. 35.

²⁰ *Ibid.*, pp. 183-184, paras. 120, 122.

²¹ *Ibid.*, p. 154, para. 39.

²² *Ibid.*, p. 154, para. 38. See also *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 129, para. 35.

²³ Written Statement of Jordan, Part One, Chapter 4.

²⁴ Written Statement of the United States, paras. 3.4, 3.19. See also Written Statement of Canada, paras. 13-16.

²⁵ Written Statement of Fiji, p. 4.

protection to the procedural rights of the parties to the bilateral dispute”, allegedly raising due process and fairness concerns²⁶.

18. On this point, Article 102, paragraphs 2 and 3, of the Rules of Court make clear that an advisory opinion may be requested “upon a legal question actually pending between two or more States”. In such cases, the Court shall “be guided by the provisions of the Statute and of [the] Rules which apply in contentious cases”, which allows account to be taken of the particular position of the States concerned in the proceedings²⁷. In any event, as recalled by Jordan in its Written Statement²⁸ and observed by others²⁹, the fact that the Court may have to pronounce on legal issues on which divergent views have been expressed does not mean that, by replying to a request, the Court is dealing with a bilateral dispute requiring the concerned States’ consent to its jurisdiction³⁰. This has been stated by the Court on several occasions, including in the 2004 Opinion. The conclusions reached in 2004 are directly applicable to the current advisory proceedings.

19. In 2004, the Court also considered that the construction of the wall could not be regarded as only a bilateral matter between Israel and Palestine: in this connection, the Court highlighted “the powers and responsibilities of the United Nations in questions relating to international peace and security”; and it referred, based on resolution 57/107 of the General Assembly, to the United Nation’s “permanent responsibility towards the question of Palestine *until the question is resolved in all its aspects* in a satisfactory manner in accordance with international legitimacy” (emphasis added). The Court further recalled that the responsibility of the United Nations in the matter “also has its origin in the Mandate and the Partition Resolution concerning Palestine”. It added that “[w]ithin the institutional framework of the Organization, this responsibility has been manifested by the adoption of many Security Council

²⁶ Written Statement of the United Kingdom, paras 67.2, 68. On the matter of consent to the Court’s jurisdiction, see also Written Statement of Guatemala, para. 37-40; Written Statement of Hungary, paras. 9-18; Written Statement of Israel, p. 4; Written Statement of Zambia, p. 2.

²⁷ The possibility for the Court to “adapt the proceedings” pursuant to Article 102, paragraph 2 of the Rules, was highlighted, for instance, by South Africa. See Written Statement of South Africa, para. 43.

²⁸ Written Statement of Jordan, Part One, para. 2.14.

²⁹ See, for example, Written Statement of Algeria, pp. 16-17; Written Statement of France, para. 16; Written Statement of South Africa, paras. 27, 35.

³⁰ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 118, para. 89.

and General Assembly resolutions, and by the creation of several subsidiary bodies specifically established to assist in the realization of the inalienable rights of the Palestinian people”³¹.

20. The matters submitted to the Court in the current advisory proceedings fall equally within the responsibilities of the United Nations as defined by the Court. The fact that the request contains a broader scope of legal questions does not alter the fact that, just as in 2004, “the object of the request before the Court is to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions. The opinion is requested on a question which is of particularly acute concern to the United Nations, and one which is located in a much broader frame of reference than a bilateral dispute”³². As a result, giving an opinion would not “have the effect of circumventing the principle of consent to judicial settlement, and the Court accordingly cannot, in the exercise of its discretion, decline to give an opinion on that ground”³³.

21. Finally, a small number of States urge the Court to decline to exercise jurisdiction, or at a minimum suggest that the Court think twice before answering the questions asked by the General Assembly, invoking the need for Israel and Palestine to negotiate a peaceful resolution of the Palestinian question. In particular:

- A few States consider that rendering an advisory opinion might undermine the chances of success of the negotiation process. This argument is dealt with in Section II below.
- Some have flagged the importance of negotiations and requested the Court to render an opinion keeping in mind that the latter should be of added value for Israel and Palestine in that context³⁴. On this point, Jordan reiterates that it has always supported peace negotiations between Israel and Palestine, and will continue to do so after the opinion has been rendered. However, such negotiations must be

³¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 158-159, para. 49.

³² *Ibid.*, pp. 158-159, paras. 49-50 (emphasis added).

³³ *Ibid.*

³⁴ See, for example, Written Statement of Norway, p. 2.

meaningful, not merely a formal process³⁵. This point is also addressed in Section II below.

- A small number of States consider that negotiations constitute the only agreed framework for Israel and Palestine to resolve their conflict, as set out by the Security Council and agreed by Israel and Palestine. According to these States, this constitutes a compelling reason for the Court not to exercise its advisory function³⁶. This argument is dealt with in the following paragraphs.

22. The Security Council's active engagement in the situation in the Middle East, including the Palestinian question, does not prevent the Court from rendering an advisory opinion answering legal questions related thereto. This was confirmed by the 2004 Opinion. The fact that the Security Council has laid down certain principles that must apply to the negotiations between Israel and Palestine, and that a Roadmap for a permanent solution to the Israeli-Palestinian conflict was adopted endorsing these principles, does not change that. Moreover, none of the relevant Security Council resolutions, nor any of the agreements entered into by the parties concerned, exclude the possibility for the Court to render an advisory opinion on the legal aspects of the matters under negotiation.

23. It is apparent from the principles set forth in Security Council resolution 242 (1967) that respect for international law must be at the centre of the negotiations between Israel and Palestine. An advisory opinion clarifying legal issues at the heart of the conflict would thus fit well with the established negotiating framework.

24. Furthermore, the questions referred by the General Assembly do not require the Court to set aside the interim allocations of authority and responsibility agreed by Palestine and Israel in the Oslo Accords. The existing interim agreements remain in effect between the parties, pending a final status settlement. The exercise by the Court of its jurisdiction would thus not in any way contravene the negotiating framework existing between the Parties.

³⁵ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 47, para. 85.

³⁶ Written Statement of Canada, paras. 6, 17-20; Written Statement of the Czech Republic, pp. 1-2; Written Statement of Israel, pp. 3-5; Written Statement of Fiji, pp. 4-6; Written Statement of Hungary, paras. 20-30; Written Statement of Nauru, paras. 3, 5-19; Written Statement of the United Kingdom, paras. 69-72.

25. In conclusion, there are no compelling reasons for the Court not to exercise its jurisdiction. On the contrary, Jordan agrees with the States that insisted on the necessity of an advisory opinion of the Court in the present circumstances. Jordan agrees, in particular, that the Court should “provide its authoritative clarification of the legal issues to the General Assembly” as “there will be no just – and therefore lasting – solution to the Israeli-Palestinian conflict without respect for international law”³⁷.

³⁷ Written Statement of Ireland, para. 58.

SECTION II

THE RELATIONSHIP BETWEEN THE ADVISORY OPINION AND THE NEGOTIATING FRAMEWORK

26. As indicated in paragraph 21 above, a few States have suggested in their Written Statements that an advisory opinion of the Court may risk driving Palestine and Israel even further away from a negotiated two-State solution. These States do not expressly ask the Court not to exercise its jurisdiction for this reason; their contention is rather that, in considering the matters before it, the Court should take account of the existing negotiating framework with a view to not prejudicing it. The States concerned do not detail how the Court should do this; they merely highlight their view that a negotiated solution to the Palestinian question is the only way of resolving the matter and that the Court should be ‘cautious’ in answering the questions asked by the General Assembly.

27. To the extent that this is a contention aimed at dissuading the Court from fully addressing the questions asked by the General Assembly, it should be rejected. As explained in the previous section³⁸, the fact that there is a negotiating framework in place is not a compelling reason for the Court to decline to exercise its jurisdiction.

28. Jordan has briefly described the negotiations in its Written Statement³⁹. Despite the present stalemate, Jordan remains a strong supporter of a negotiated solution in accordance with relevant UN resolutions and the agreements reached by the most directly concerned parties. At the same time, Jordan is of the firm view that the Israeli-Palestinian conflict must be brought to an end on the basis of international law. Any broad and unsubstantiated assertion that clarifying the law may have adverse effects on Israel’s and Palestine’s ability to agree on a final status settlement should not be countenanced by the Court. International law supports friendly relations between States and the peaceful settlement of disputes.

29. The United States advances in some detail the position described at paragraph 26 above. It states that “the questions referred should be understood as a request for advice aimed at facilitating the General Assembly’s proper role and function within the United Nations for

³⁸ See paras. 21-24 above.

³⁹ Written Statement of Jordan, Part One, paras. 3.20-3.60.

promoting a negotiated resolution to the conflict. It is essential that the Court’s opinion advance that objective”⁴⁰. It also notes that “the United Nations has been consistent in its support for the proposition that a comprehensive, just and lasting peace must be the result of direct negotiations between the parties to the conflict, not one imposed from outside or by one party”⁴¹, adding that “the Israeli and Palestinian sides ... have acknowledged the continued relevance of their prior agreements”⁴², and that some Member States have voiced concern that “this referral would damage the prospect of Israeli-Palestinian negotiations in the future”⁴³.

30. A few other States advance similar views, albeit more briefly. Guatemala, for instance, states that “the final settlement of the Israel-Palestine dispute will only be achieved through bilateral negotiations”⁴⁴, and that the Court should “consider[] the ... bilateral negotiations framework and contribute to its prompt implementation”⁴⁵. Canada suggests that “it is only through negotiation between the parties that a lasting peace can be achieved”⁴⁶. The Russian Federation, for its part, states that the Court’s advisory opinion “will have to be in line with this framework [Security Council resolution 2334] and contribute to its implementation”⁴⁷. It adds that “the Court, whatever advisory opinion it might give, should strive to ensure that the opinion contributes to the task of creating conditions for successful final status negotiations, or, at a minimum, that the opinion does not create new obstacles to those negotiations”⁴⁸. Italy states that the Court should “consider how to exercise its functions in a manner consistent with the responsibilities and stated interests of the General Assembly and Security Council, so as to preserve the parties’ ability to negotiate peace and a two-State solution ...”⁴⁹. The Czech Republic states that, if the Court decides to render an opinion, “the answers should not be

⁴⁰ Written Statement of the United States, para. 1.6.

⁴¹ *Ibid.*, para. 2.1.

⁴² *Ibid.*, para. 2.21.

⁴³ *Ibid.*, para. 2.23.

⁴⁴ Written Statement of Guatemala, para. 29.

⁴⁵ *Ibid.*, para. 48.

⁴⁶ Written Statement of Canada, para. 6.

⁴⁷ Written Statement of the Russian Federation, para. 43. See also paras. 55-56.

⁴⁸ *Ibid.*, para. 59.

⁴⁹ Written Statement of Italy, para. 5.

construed as allowing departure from the established legal framework already established for putting an end to decades of confrontation and violence ...”⁵⁰.

31. These arguments are not new. In its 2004 Opinion, the Court responded to a similar position noting that “[i]t is not clear ... what influence the Court’s opinion might have on those negotiations: participants in the present proceedings have expressed differing views in this regard. The Court cannot regard this factor as a compelling reason to decline to exercise its jurisdiction”⁵¹. In the *Kosovo* advisory opinion, the Court similarly stated that it “cannot – in particular where there is no basis on which to make such an assessment – substitute its own view as to whether an opinion would be likely to have an adverse impact”⁵².

32. The same reasoning applies in this case. Even if the questions on which the Court’s opinion is sought are broader than those of 2004, the view that the Court’s opinion may have detrimental effects on the negotiations between Palestine and Israel is speculative. They offer, in short, “no basis on which to make such an assessment”⁵³.

33. Moreover, as highlighted in Jordan’s Written Statement, negotiations between Israel and Palestine have not progressed in the past two decades⁵⁴. An opinion by the Court could thus only have a positive impact on the conduct of the negotiations. As indicated in its Written Statement, Jordan’s view is that an opinion by the Court clarifying the law could be useful to further the negotiations between the parties concerned. International law is without doubt an important factor to be considered in the course of those negotiations. As the Court stated in the 2004 Opinion:

“The Court has reached the conclusion that the construction of the wall by Israel in the Occupied Palestinian Territory is contrary to international law and has stated the legal consequences that are to be drawn from that illegality. The Court considers itself bound to add that this construction must be placed in a more general context. Since 1947, the

⁵⁰ Written Statement of the Czech Republic, p. 3.

⁵¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 160, paras. 52-53.

⁵² *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 418, para. 35. See also *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 237, para. 17.

⁵³ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 418, para. 35.

⁵⁴ Written Statement of Jordan, Part One, paras. 3.20-3.60.

year when General Assembly resolution 181 (II) was adopted and the Mandate for Palestine was terminated, there has been a succession of armed conflicts, acts of indiscriminate violence and repressive measures on the former mandated territory. The Court would emphasize that both Israel and Palestine are under an obligation scrupulously to observe the rules of international humanitarian law, one of the paramount purposes of which is to protect civilian life. 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 only through implementation in good faith of all relevant Security Council resolutions, in particular resolutions 242 (1967) and 338 (1973). The 'Roadmap' approved by Security Council resolution 1515 (2003) represents the most recent of efforts to initiate negotiations to this end. The Court considers that it has a duty to draw the attention of the General Assembly, to which the present Opinion is addressed, to the need for these efforts to be encouraged with a *view to achieving as soon as possible, on the basis of international law, a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours, with peace and security for all in the region*⁵⁵.

34. The Court does not have to decide permanent status issues in order to respond to the General Assembly's request. Jordan notes, for example, that Question (b) requires the Court to determine the status of Israel's occupation of the Occupied Palestinian Territory, including East Jerusalem. As explained in Chapter 5 of Jordan's Written Statement and in Section IV below, Jordan's position is that the occupation as such is unlawful, and that consequently Israel must withdraw from that territory as rapidly as possible. It nevertheless remains open to Palestine and Israel to reach an agreement on final status issues, and it is vital that they do so in order to achieve the two-State solution and a just, lasting and comprehensive peace in the region.

35. In short, it does not follow that the advice to be given by the Court to the General Assembly will have detrimental effects as some States suggest. The rights of the Palestinian people cannot be withheld because of a negotiating framework that has clearly not borne fruit to date because of Israel's lack of good faith and its actions aimed at establishing *faits accomplis*, as noted by the Court in 2004⁵⁶, including displacing the Palestinians from their land and annexing territory *de jure* or *de facto*. This is all the more so when, instead of following the negotiating framework, Israeli authorities are scaling up their actions and rhetoric, and are showing no sign of wishing to achieve a just, lasting and comprehensive peace.

⁵⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 201, para. 162 (emphasis added).

⁵⁶ *Ibid.*, p 184, para 121.

36. As highlighted in paragraph 21 above, negotiations cannot merely be a formal process. Attempts to negotiate must be genuine⁵⁷ and negotiations must be conducted in good faith, with each of the parties paying “reasonable regard to the legal rights of the other”⁵⁸. The Court stressed that “States must conduct themselves so that the negotiations are meaningful”⁵⁹, which will not be the case when either of the parties to the negotiations “insists upon its own position without contemplating any modification of it”⁶⁰.

37. Moreover, as stated by the General Assembly in its resolution on “Principles and guidelines for international negotiations”⁶¹, negotiations must be conducted “in accordance with international law in a manner compatible with and conducive to the achievement of the stated objective of negotiations”. In this case, the stated objective of the negotiations between Israel and Palestine, as affirmed in Security Council resolution 242 (1967), is to achieve a just and lasting peace in the Middle East, which must include, in particular:

- Withdrawal of Israel armed forces from territories occupied in the 1967 conflict;
- Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force; and

⁵⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, pp. 132-133, paras. 157-159.

⁵⁸ See in particular UN General Assembly resolution 53/101, 20 January 1999, para. 2(a) (“Negotiations should be held in good faith”). See also *Fisheries Jurisdiction (United Kingdom v. Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 33, para. 78; *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 202, para. 69.

⁵⁹ *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece), Judgment, I.C.J. Reports 2011*, p. 685, para. 132.

⁶⁰ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 47, para. 85. See also the advisory opinion on *Railway Traffic between Lithuania and Poland*, in which the Permanent Court of International Justice stated that the obligation to negotiate is an obligation “not only to enter into negotiations, but also to pursue them as far as possible, with a view to concluding agreements” (*Railway Traffic between Lithuania and Poland, Advisory Opinion, 1931, P.C.I.J., Series A/B, No. 42*, p. 116). This passage of the PCIJ’s advisory opinion has been relied on by the Court in several judgments, including: *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, p. 132, para. 157.

⁶¹ UN General Assembly resolution 53/101, 20 January 1999.

- The necessity for achieving a just settlement of the refugee problem⁶².

38. The obligation to implement Security Council resolution 242 (1967) “in all of its parts” was reaffirmed in Security Council resolution 338 (1973)⁶³ and on many occasions thereafter including resolution 2334 (2016) of 23 December 2016. In the Declaration of Principles on Interim Self-Government Arrangements (Oslo I), Israel and the PLO expressly stated that “the negotiations on the permanent status will lead to the implementation of Security Council resolutions 242 (1967) and 338 (1973)”⁶⁴. They reaffirmed this commitment in the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II)⁶⁵. Jordan notes that none of the States participating in the current advisory proceedings has questioned the fact that these resolutions continue to form the basis for the negotiations between Israel and Palestine.

39. Yet, as highlighted in Jordan’s Written Statement, Israel has consistently refused to make proposals compatible with the stated objective of the negotiations as defined above⁶⁶. In particular:

- Successive Israeli governments have never accepted the premise of a Palestinian State on the basis of the pre-1967 borders, and all proposals put forward by the Israeli government since the Oslo Accords have been made on the premise that the Palestinian negotiators will have to accept the new ‘realities’ of Israeli settlements built since 1967⁶⁷ ;
- Israeli proposals and negotiating positions have consistently asserted that the whole of Jerusalem is under Israeli sovereignty. The proposals to return a limited number

⁶² UN Security Council resolution 242 (1967), 22 November 1967.

⁶³ Security Council resolution 338 (1973), 22 October 1973.

⁶⁴ See Letter from the Permanent Representatives of the Russian Federation and the United States of America to the United Nations addressed to the Secretary-General (A/48/486), 8 October 1993, and its Annex “Declaration of Principles on Interim Self-Government Arrangements”.

⁶⁵ See Letter from the Permanent Representatives of the Russian Federation and the United States of America to the United Nations addressed to the Secretary-General, 27 December 1995, and its Annex “Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip” (available at: <https://www.un.org/unispal/document/auto-insert-185434/>, accessed on 12 July 2023).

⁶⁶ See Written Statement of Jordan, Part One, paras. 3.20-3.60.

⁶⁷ *Ibid.*, para. 3.55.

of Arab neighborhoods in occupied East Jerusalem to the Palestinian State was contingent on the Palestinians recognizing Israel's sovereignty over the vast part of that territory, on renouncing any sovereignty rights over the *Al Haram Al-Sharif/Al-Aqsa* Mosque and on making other major concessions with regard to the Palestinian people's rights under international law⁶⁸;

- No Israeli proposals were made that would acknowledge Israel's responsibility under international law for the refugee problem or provide a just solution in accordance with international law. The rights of return and compensation were never acknowledged, and all Israeli proposals would have the effect of undermining the basic rights of the Palestinian refugees *vis-à-vis* Israel⁶⁹.

40. In light of the above, Jordan emphatically reiterates that any negotiation between Israel and Palestine must be conducted in conformity with the parties' obligation to negotiate in good faith and in a meaningful manner, with a view to arriving at an agreement within the parameters set out in Security Council resolution 242 (1967) and expressly accepted by both States.

41. To conclude this section, Palestine and Israel must strive to arrive at a negotiated solution of their longstanding conflict in accordance with international law, including the relevant United Nations framework and their bilateral agreements, and in light of this Court's advisory opinion. The Court rendering an opinion clarifying certain aspects of the conflict under international law is not incompatible with that negotiating framework. On the contrary, an opinion by the Court and the pursuance of negotiations would complement each other. Any argument suggesting otherwise should be dismissed.

42. In the cases concerning *Fisheries Jurisdiction*, the Court found that the parties were under mutual obligations to undertake negotiations in good faith for the equitable solution of their differences, in relation to which it stated that:

“In the fresh negotiations which are to take place on the basis of the present Judgment, the Parties will have the benefit of the above appraisal of their respective rights, and of certain guidelines defining their scope. The task before them will be to conduct their

⁶⁸ *Ibid.*, para. 3.56.

⁶⁹ *Ibid.*, para. 3.57. On the denial by Israel of the right of return of the Palestinian people, see for example: Written Statement of Belize, paras. 57-61.

negotiations on the basis that each must in good faith pay reasonable regard to the legal rights of the other ... and having regard to the interests of other States which have established ... rights in the area”⁷⁰.

A similar conclusion applies to the present proceedings, in which a clarification by the Court of the legal aspects of the conflict could only benefit further negotiations between the concerned States.

⁷⁰ *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Merits, Judgment, I.C.J. Reports 1974, p. 33, para. 78; *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland)*, Merits, Judgment, I.C.J. Reports 1974, p. 202, para. 69.

SECTION III

QUESTION (A)

43. Question (a) reads:

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?

44. Jordan responded to this question in Chapter 4 of Part One of its Written Statement, as well as in Part Two. Chapter 4 of Part One was divided into five sections. The first dealt with Israel's ongoing violation of the right of the Palestinian people to self-determination; the second with Israel's 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; the third with Israel's discriminatory legislation and measures; the fourth with crimes against humanity; and the fifth with the legal consequences of Israel's violations of international law.

45. Jordan's Comments on the Written Statements of others will follow the same five headings. Jordan notes that the Written Statements of many participants cover the same ground as Jordan, sometimes in considerable depth, and in a manner that is consistent with that of Jordan. The Written Statements show that there exists ample evidence for the Court to make an informed assessment of the situation and fully answer the question asked.

A. Israel's violation of the right of the Palestinian people to self-determination

46. In its Written Statement, Jordan described Israel's ongoing violation of the right of Palestinian people to self-determination, including the right to permanent sovereignty over natural resources⁷¹. Most Written Statements have come to the same conclusions.

⁷¹ Written Statement of Jordan, Part One, paras. 4.7-4.25.

47. After describing the applicable law, including acceptance of the right to self-determination as a *jus cogens* norm, Palestine examined the ongoing violation of the right in its different aspects – territorial integrity, the prohibition of demographic manipulation, permanent sovereignty over natural resources, and the right to freely determine political status and pursue economic, social and cultural development. It concluded that while each policy or practice is sufficient to amount to a serious breach of the right to self-determination, collectively, “they amount to a manifest, grave, longstanding and ongoing violation ...”⁷².

48. For Ireland, Israel’s “settlement-related policies and practices in the Occupied Palestinian Territory are wholly inconsistent with the temporary administration of territory in accordance with the law of military occupation”, the situation of annexation created by the wall is part of a wider process of annexation of territory, and “is in serious breach of its obligation to respect the right of the Palestinian people to self-determination”⁷³. Egypt similarly argues that “the fragmentation and dismemberment of the Occupied Palestinian territories, through the Israeli settlements policy and the *de facto* and *de jure* annexation, is a violation of the fundamental principle of self-determination”⁷⁴. Qatar adds that Israel indefinitely deprives the Palestinian people of their right to self-determination “[b]y intentionally transferring its population to the OPT and causing displacement of Palestinians within the OPT” and “[b]y intentionally engaging in policies that fragment Palestinian territory and dispossess Palestinians thereof”⁷⁵.

49. Chile concentrated on a chronological reading of the reports of the UN Special Rapporteurs on the situation of human rights in the Palestinian territories occupied since 1967 to show the continuous deterioration in the humanitarian and human rights situation over 29 years. It adopted a position similar to that of Jordan, finding that through its prolonged occupation and all the measures taken during that time, Israel has deprived the Palestinian people of “the right to determine their own political status and to be free to pursue their economic, social, and cultural development without external interference”⁷⁶. Lebanon added

⁷² Written Statement of Palestine, para. 5.86.

⁷³ Written Statement of Ireland, paras. 35, 38, 44-45. See also Written Statement of Switzerland, para. 38.

⁷⁴ Written Statement of Egypt, para. 225. See also paras. 236-237. See also Written Statement of Belize, paras. 21-22; Written Statement of Guyana, paras. 29-31; Written Statement of the United Arab Emirates, paras. 73-74.

⁷⁵ Written Statement of Qatar, paras. 4.28 and 4.32.

⁷⁶ Written Statement of Chile, para. 95, and paras. 79-86. See also Written Statement of the Russian Federation, para. 70.

“l’interdiction d’exploiter les ressources naturelles des territoires occupés” to the list of fundamental rules being violated by Israel⁷⁷, as Jordan had done⁷⁸. Algeria, too, considered that, “[l]a spoliation des richesses naturelles des Palestiniens constitue une partie intégrante de la politique coloniale israélienne”⁷⁹.

50. Jordan agrees with the important points that have been developed by others. In particular, Jordan reiterates its firm denunciation of the “exploitation, endangerment and depletion of natural resources by Israel ... and Israeli settlers” in the Occupied Palestinian Territory, including East Jerusalem⁸⁰, and considers that Israel’s practices in this regard are particularly concerning in relation to water resources, a point emphasized by several participants⁸¹. As pointed out by Palestine, Israel has prohibited Palestinians from accessing the Jordan River or drawing any of its waters since the occupation began in 1967 and it has severely restricted their access to all other water resources⁸². In the West Bank, the entire water supply system is controlled by the Israeli company Mekorot (owned by the Government of Israel), which abstracts water from Palestinian lands to transfer it to the settlers⁸³.

51. The Maldives highlighted that “there is a seriously inequitable allocation of water resources between Palestinians and Israeli settlers within the OPT. As of May 2022, it was estimated that, while Israeli settlers have access to 320 litres per capita per day, Palestinians in Areas A and B of the West Bank have access to 75-100 litres per capita per day, and Palestinians in Area C to 30-50 litres per capita per day. Palestinians are forced to purchase water from official or private providers at a cost around six times higher than the national

⁷⁷ Written Statement of Lebanon, para. 38.

⁷⁸ Written Statement of Jordan, Part One, paras. 4.10-4.11.

⁷⁹ Written Statement of Algeria, p. 48. See also Written Statement of the Organisation of Islamic Cooperation, para. 405.

⁸⁰ ECOSOC resolution 2022/22, 22 July 2022, referred to in Written Statement of Jordan, Part One, para. 4.22. See also the Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including Jerusalem, and Israel, dated 14 September 2022 (UN Doc. A/77/328), quoted at para. 3.251 of the Written Statement of Palestine, referring to “the expropriation, looting, plundering and exploitation of land and vital natural resources” by Israel in the West Bank.

⁸¹ See, in particular, Written Statement of Palestine, paras. 4.145-4.153, 5.56-5.57. See also: Written Statement of Bolivia, p. 10, 16; Written Statement of Cuba, p. 19; Written Statement of Malaysia, para. 52; Written Statement of the Maldives, paras. 38-41; Written Statement of the African Union, paras. 183-189.

⁸² Written Statement of Palestine, paras. 3.249-3.256, 4.147. See also Written Statement of the African Union, para. 188.

⁸³ Written Statement of Palestine, paras. 4.148-4.149. See also Written Statement of the Maldives, para. 41.

price”⁸⁴. Israel’s policies in that regard have been denounced, among others, by the United Nations High Commissioner for Human Rights⁸⁵, the United Nations Conference on Trade and Development (‘UNCTAD’)⁸⁶ and several non-governmental organizations⁸⁷.

52. Palestine rightly underscored that Israel has ignored the persistent demands of the international community to cease its practices in relation to water⁸⁸. Jordan endorses Palestine’s statement that:

“Israel’s seizure of fresh water sources in the West Bank – its most precious natural resources essential to survival – and exploitation of them for its own benefit, and that of its implanted settler population, jeopardizes water security which is essential for the sustenance of the Palestinian people and for its economy”⁸⁹.

It is critical that sovereignty over Palestinian water resources be returned to the Palestinian people.

53. In this regard, Jordan reiterates that Israel’s unlawful appropriation and exploitation of the water resources in the Occupied Palestinian Territory is also a clear violation of the rules on pillage of natural resources in an occupied territory⁹⁰, the rules on usufruct⁹¹ under international humanitarian law and the rule of sustainable use of natural resources. Such rules are reflected in the International Law Commission’s principles on the protection of the

⁸⁴ Written Statement of the Maldives, para. 41(e), referring to the Reports of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel of 9 May 2022 (UN Doc. A/HRC/50/21) and 14 September 2022 (UN Doc. A/77/328). See also the Written Statement of the African Union, para. 187.

⁸⁵ Human Rights Council, ‘Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem’ (A/HRC/48/43), 15 October 2021, paras. 31-32.

⁸⁶ UNCTAD, The Economic Costs of the Israeli Occupation for the Palestinian People: The Cost of Restrictions in Area C Viewed from Above (UNCTAD/GDS/APP/2022/1), p. 7: “Evidence suggest (sic) that the occupying Power continues to deplete the natural resources, particularly water resources, in the occupied territory to its advantage and to the detriment of the Palestinian people. The water policy of Israel furthers economic disadvantages and the expansion of settlements, while depriving the Palestinian economy and agriculture of critical water resources”.

⁸⁷ See for example: Amnesty International, ‘The Occupation of Water’, 29 November 2017 (<https://tinyurl.com/3pnxac4c>).

⁸⁸ Written Statement of Palestine, para. 3.256.

⁸⁹ *Ibid.*, para. 5.57.

⁹⁰ The Hague Regulations, Articles 28 and 47; Fourth Geneva Convention, Article 33, para. 2.

⁹¹ The Hague Regulations, Article 55.

environment in relation to armed conflicts⁹². Principle 16 provides that pillage of natural resources is prohibited. Principle 20 further provides that an occupying power is permitted to administer and use the natural resources in an occupied territory only for the benefit of the protected population and for other lawful purposes under the law of armed conflict.

B. Israel’s 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

54. In its Written Statement, Jordan explained that occupation was by definition a temporary situation, limited by the requirements of military necessity and qualified by international humanitarian law and international human rights law, including the prohibition of discrimination on several grounds, including race, which is required both by the Convention on the Elimination of All Forms of Racial Discrimination (‘CERD’) and by customary international law.

55. Israel’s occupation, however, is not of a temporary nature. It is evidently intended to be indefinite, as demonstrated by, *inter alia*, the policies and practices of settlements and outposts, exclusive roads, denial of access to land, appropriation and control of natural resources, the tolerance of settler violence, measures to alter the demographic composition of Palestinian land, the building of permanent infrastructures, the enactment of Israeli laws with direct applicability in the West Bank, the transfer of powers of control and governance of the Occupied Palestinian Territory from military to civil leadership and repeated statements of ‘sovereign intent’ by Israeli government officials. All these facts undeniably amount to annexation. There is a large convergence in the Written Statements on these matters. Israel’s intent to annex the Occupied Palestinian Territory is manifest in relation to East Jerusalem, which Israel’s 1980 Basic Law purported to make part of the “complete and united” capital of

⁹² Annual Report of the International Law Commission 2022 (A/77/10), Chapter V. See also UN General Assembly resolution 77/104, 19 December 2022, which took note of and annexed the principles on the protection of the environment in relation to armed conflicts.

Israel⁹³. As highlighted in Jordan's Written Statement, this purported annexation has been firmly rejected by the international community⁹⁴.

56. Also in its Written Statement, Jordan described Israeli attempts to alter the demographic composition of the Occupied Palestinian Territory, with particular reference to the Holy City of Jerusalem⁹⁵. A number of other States have also commented on such measures in similar terms, recalling the condemnation by the General Assembly and the Security Council. Palestine⁹⁶, for example, identified the issue as one of 'demographic manipulation'⁹⁷; Qatar described the restrictions on Palestinian residency in East Jerusalem as a "centrepiece of Israel's demographic control policies"⁹⁸; the United Arab Emirates noted that East Jerusalem is "inextricably linked to the viability of the two-State solution"⁹⁹; France considered the fact of demographic change as part of Israel's colonisation or annexation policy in the Occupied Palestinian Territory, particularly East Jerusalem¹⁰⁰; Djibouti expressed the view that the measures to change the demographic composition of East Jerusalem were in violation of international humanitarian law and international human rights law¹⁰¹; and Switzerland noted that measures taken by Israel led to "des changements fondamentaux, notamment démographiques, pouvant endosser un caractère permanent. Elles affectent négativement la population palestinienne au lieu de lui être bénéfiques et contribuent à la création d'un environnement coercitif et vont donc à l'encontre des principes du droit de l'occupation"¹⁰².

57. Attempts by Israel to change the religious and historical character of Jerusalem were also denounced by Jordan, which pointed to the destruction of Muslim Holy places and the severe restrictions on access to Muslim and Christian Holy Places, not just for worshippers but

⁹³ Written Statement of Jordan, Part One, paras. 3.8, 3.13, 4.83. See also Chapter 3, Part A of the Written Statement of Palestine, on Israel's annexation of Jerusalem.

⁹⁴ See Written Statement of Jordan, Part One, paras. 4.87-4.88, referring in particular to Security Council resolution 478 (1980) of 20 August 1980 and General Assembly resolution 36/120E of 10 December 1981.

⁹⁵ Written Statement of Jordan, Part One, paras. 4.85-4.94.

⁹⁶ Written Statement of Palestine, paras. 3.12-3.30, 3.73-3.91, 3.220-3.238.

⁹⁷ *Ibid.*, paras. 5.2, 5.12-5.14, 5.49-5.54.

⁹⁸ Written Statement of Qatar, para. 2.45 and *passim*.

⁹⁹ Written Statement of the United Arab Emirates, paras. 23-52.

¹⁰⁰ Written Statement of France, paras. 52-69, 70-77.

¹⁰¹ Written Statement of Djibouti, paras. 43-49.

¹⁰² Written Statement of Switzerland, para. 48.

also for authorities vested with responsibility to ensure their maintenance¹⁰³. Palestine similarly highlighted Israel's policies and practices "to promote Jerusalem's Jewish Israeli character and undermine its Palestinian, Muslim and Christian character", denouncing attacks on Muslim religious sites, restrictions on Muslim and Christian worshippers and archeological excavations in close vicinity of Muslim and Christian religious sites, contrary to various resolutions by UNESCO¹⁰⁴.

58. Finally, Jordan recalled in its Written Statement that Israel is bound to respect its obligations as an Occupying Power under international humanitarian law, and obliged to protect and fulfil the human rights of the Palestinian people, throughout the Occupied Palestinian Territory, irrespective of the duration of the Occupation. The violation of Israel's obligations in that respect was overwhelmingly denounced in the Written Statements. In this regard, Jordan recalls its position that Gaza remains an integral part of the Occupied Palestinian Territory since 1967, notwithstanding Israel's "disengagement" in 2005, as Israel continues to exercise control over Gaza, particularly at the land crossings, as well as over the airspace and offshore maritime areas¹⁰⁵. This position was expressly endorsed by several States in their Written Statements¹⁰⁶. There can be no doubt that Israel's obligations under international human rights law and international humanitarian law apply in Gaza¹⁰⁷.

C. Israel's discriminatory legislation and measures

59. In its Written Statement, Jordan highlighted the various discriminatory measures introduced by Israel under the guise of military law, and demonstrated their discriminatory effects across multiple aspects of the daily life of Palestinians subject to occupation. These effects include the denial of permission to build houses, schools and social infrastructure; the liability to demolition of so-called unauthorised constructions; the requirement of permits to

¹⁰³ Written Statement of Jordan, Part Two.

¹⁰⁴ Written Statement of Palestine, paras. 3.131-3.143.

¹⁰⁵ Written Statement of Jordan, Part One, para. 3.9.

¹⁰⁶ See for example: Written Statement of Algeria, pp. 34-35, 37; Written Statement of Belize, paras. 27-30, para. 52 and para. 56(e), referring to Gaza as "the world's largest prison" and "an integral part of Israel's policy of permanent domination and subjugation of the Palestinian people in denial of their fundamental human rights and right to self-determination"; Written Statement of Bolivia, pp. 10-11; Written Statement of Cuba, p. 7; Written Statement of Djibouti, paras. 37-39; Written Statement of Palestine, paras. 4.192-4.202.

¹⁰⁷ See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 178, para. 106.

access land and employment; the denial of access to natural resources, particularly water; the use of the military to repress the political expression of opinion through excessive use of lethal force; as well as arbitrary ‘administrative’ detention, the targeting of children, and the obstruction of access to schools, hospitals and health services. In addition, Palestinians now face extreme settler violence, often tolerated or encouraged by Israeli military forces which neglect their duty to protect them.

60. Jordan’s Written Statement concentrated on Israel’s obligation not to discriminate against Palestinians on grounds of race under CERD or other grounds as set forth in the ICCPR, and it highlighted the issues by reference to the application of military law, the planning regime, military repression and impunity for settler violence¹⁰⁸.

61. The issue of racial discrimination commanded much attention throughout the Written Statements of States and international organizations, with some characterising the regime imposed by Israel as amounting to apartheid. Much of Namibia’s Written Statement, for example, focused on apartheid, which it saw as both defined by the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid (‘Apartheid Convention’), and as informing the scope of Article 3 of CERD. It viewed the various discriminatory measures adopted by Israel through the lens of apartheid¹⁰⁹. Chile referred to the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, who considered that by 2007, “the situation could be described as one of colonization and apartheid”¹¹⁰. Belize, the Gambia, Indonesia, Lebanon and Qatar argued similarly¹¹¹. Djibouti also urged the Court to specifically examine the question whether Israel’s practices amount to apartheid¹¹².

62. The League of Arab States considered racial discrimination, apartheid and other violations of human rights more broadly within the “illegality of the conduct of the

¹⁰⁸ Written Statement, paras. 4.95-4.141.

¹⁰⁹ Written Statement of Namibia, paras. 18-120.

¹¹⁰ Written Statement of Chile, para. 46.

¹¹¹ Written Statement of Belize, paras. 63-73; Written Statement of the Gambia, paras. 1.9-1.14; Written Statement of Indonesia, paras. 37-39; Written Statement of Lebanon, paras. 47-52; Written Statement of Qatar, paras. 4.49-4.108. See also: Written Statement of Kuwait, para. 33.

¹¹² Written Statement of Djibouti, paras. 28-30.

occupation”¹¹³. Palestine included the prohibition of racial discrimination and apartheid in the ‘applicable law’¹¹⁴, and it then identified in detail Israeli policies and practices that violated that law, including CERD¹¹⁵. After providing many examples, Palestine concluded that the “deeply entrenched system of racial discrimination”, with its basis in a dual legal system applying different laws, is “in fact, indistinguishable from apartheid”¹¹⁶.

63. South Africa referred to an “institutionalised and oppressive system of Israeli domination”, to the reproduction of various “apartheid-style atrocities”, and to policies that seek to advance a Jewish nation “whose privilege can only be maintained through the dispossession and fragmentation of Palestinian land, the economic and political malignment of Palestinians, restrictions on their movement, the denial of their dignity and absence of legal protection through arbitrary laws and military orders”¹¹⁷.

D. Crimes against humanity

64. Jordan took note of the definition of crimes against humanity, both in the Statute of the International Criminal Court and in the recent work of the International Law Commission. Jordan concluded that crimes against humanity are being committed in the Occupied Palestinian Territory, including by way of deaths and injuries, administrative detention, systematic discrimination, and institutionalised impunity, and that Israel had also violated its obligations to prevent and punish such crimes.

65. Other States have come to a similar conclusion. Palestine, for example, pointed out that the International Law Commission had noted that some of the most serious wrongful acts are defined in terms of their composite character and included as examples the obligations concerning “apartheid or crimes against humanity, systematic acts of racial discrimination”¹¹⁸,

¹¹³ Written Statement of the League of Arab States, paras. 76-91.

¹¹⁴ Written Statement of Palestine, paras. 2.44-2.50.

¹¹⁵ Written Statement of Palestine, paras. 4.7-4.220.

¹¹⁶ *Ibid.*, paras. 4.221-4.253.

¹¹⁷ Written Statement of South Africa, paras. 91, 93, 118. See also Written Statement of the Organisation of Islamic Cooperation, para. 334; Written Statement of the African Union, para. 193 (noting that Israel’s prolonged occupation has subjected Palestinians to “alien domination, systematic discrimination, and the denial of their basic human rights”); Written Statement of Saudi Arabia, para. 29; Written Statement of Syria, para. 20; Written Statement of Yemen, paras. 34-38.

¹¹⁸ Written Statement of Palestine, paras. 7.35-7.36; 4.221-4.253.

which were precisely those described in Chapter 4 of Jordan's Written Statement. Qatar also detailed the violations of core international legal norms and concluded that the conduct of the occupation entailed crimes against humanity, in addition to serious breaches of international humanitarian law and international human rights law¹¹⁹.

66. As one Written Statement puts it: "Israël exige depuis sa création une sorte d'exceptionnalité par rapport au droit international qui régit la société mondiale"¹²⁰ – a view which is equally applicable to the impunity for acts committed by the military and by settlers, as it is to all the principles and rules that are potentially the subject of this request for an advisory opinion.

E. The legal consequences of Israel's violations of international law

67. Jordan reaffirms that all measures taken in violation of the Palestinian people's right to self-determination, including measures taken under Israel law to alter the legal, geographic and demographic character and status of Jerusalem and of the Occupied Palestinian Territory as a whole, are null and void and have no legal validity¹²¹.

68. Furthermore, Jordan strongly reemphasizes that Israel must put an end to all the policies and practices which violate: (1) the right of the Palestinian people to self-determination; (2) the law of military occupation, including the prohibition of establishing settlements and 'outposts' and the prohibition of the annexation of occupied territory; (3) the related principle of non-acquisition of territory by force; (4) the prohibition of all forms of discrimination; (5) international refugee law; and (6) the obligation not to engage in acts that constitute crimes against humanity, and to prevent and punish such crimes. In addition, Israel must ensure freedom of access to the Holy Places that came under its control following the 1967 War and must not interfere with the authority of the Jordan *Awqaf* Department in maintaining, administering and regulating access to the *Haram Al-Sharif/Al-Aqsa* Mosque¹²².

¹¹⁹ Written Statement of Qatar, paras. 3.164–3.189.

¹²⁰ Written Statement of the Organisation of Islamic Cooperation, para. 199.

¹²¹ Written Statement of Jordan, Part One, para. 4.178.

¹²² Written Statement of Jordan, Part One, para. 4.176.

69. Israel is also obliged to make full reparation for all injury caused by its internationally wrongful acts, be it in the form of restitution, compensation or satisfaction, singly or in combination¹²³. Jordan agrees with the States that have insisted on Israel's obligation to compensate Palestine in order to make full reparation for the damage caused by its wrongful acts, insofar as restitution is materially impossible. Jordan notes in particular that Palestine referred to the need for compensation for "the losses caused by Israel's expropriation of the natural resources of Palestine, including the exploitation of land, water resources and vast amounts of valuable minerals, the destruction of structures for the management and allocation of water supply to Palestinians, and the destruction of olive trees and other sources of livelihood"¹²⁴. Brazil similarly considers that "it is also important to take into consideration the rights of the Palestinian people over their natural resources, including land, water and energy resources when financially assessing compensation"¹²⁵. So does Malaysia¹²⁶. Belize also points to Israel's obligation to compensate the damage caused by the exploitation of Palestinian natural resources, including natural resources within Gaza's maritime areas¹²⁷. Jordan concurs with these statements.

70. Finally, Jordan reiterates its view that the ongoing violation by Israel of its obligations under international law entails legal consequences for all other States and for the United Nations¹²⁸. Jordan refers to its Written Statement, which details these legal consequences¹²⁹, and agrees with Djibouti that:

“... la persistance de la partie israélienne à ignorer toutes les injonctions de respecter ses obligations internationales, qu'elles émanent de cette Cour, du Conseil de sécurité, de l'Assemblée Générale, du Conseil des droits de l'homme, du Secrétaire général, de missions d'enquête ou de très nombreux rapports de l'ONU rend particulièrement cruciale l'attitude de la Communauté internationale, notamment les États et l'ONU afin d'amener la partie israélienne à se conformer au droit international. Il est dès lors essentiel que les États tiers remplissent pleinement les obligations que le droit

¹²³ Written Statement of Jordan, Part One, para. 4.177.

¹²⁴ Written Statement of Palestine, para. 7.68(d).

¹²⁵ Written Statement of Brazil, para. 56.

¹²⁶ Written Statement of Malaysia, para. 67.b.

¹²⁷ Written Statement of Belize, para. 80. On that point, see also Written Statement of Algeria, p. 48, Section VI-7.

¹²⁸ Written Statement of Jordan, Part One, para. 4.179.

¹²⁹ Written Statement of Jordan, Part One, paras. 4.180-4.189.

international met à leur charge, en cas de violation grave et systématique d'une norme impérative par un autre État¹³⁰.

¹³⁰ Written Statement of Djibouti, para. 54.

SECTION IV
QUESTION (B)

71. Question (b) reads:

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?

72. This question addresses two points: the current legal status of the occupation and the legal consequences that arise from this status. Jordan responded to these points in Chapter 5 of its Written Statement. It summarized its position as follows:

“The policies and practices of Israel addressed in Chapter 4, which constitute serious and systematic violations of the right of self-determination, international humanitarian law and the prohibition of racial discrimination, leave no doubt that the occupation of the Palestinian territory is as a whole unlawful”¹³¹.

“A principal legal consequence arising from the unlawful occupation of the Occupied Palestinian Territory, including East Jerusalem, is that Israel has an obligation to withdraw, as rapidly as possible, from the whole of the territory in question. In addition Israel must make full reparation for its internationally wrongful acts”¹³².

73. Jordan has the following comments on what others have said on Question (b).

74. In their Written Statements, many States, including Jordan, address the legal consequences for all States and for the United Nations in terms of the international law of responsibility. On the question about how the policies and practices of Israel affect the legal

¹³¹ Written Statement of Jordan, Part One, para. 5.3.

¹³² *Ibid.*, para. 5.14.

status of the occupation, many States conclude that these policies and practices have rendered the occupation unlawful as a whole¹³³, and that the occupation must be brought to an end¹³⁴.

75. Palestine considered that “Israel’s occupation of the OPT is itself unlawful, rendering Israel’s continued presence in the OPT an internationally wrongful act as it seriously breaches at least three peremptory norms of general international law”¹³⁵, namely, the inadmissibility of acquiring territory through the threat or use of force, the prohibition of racial discrimination and/or apartheid, and the obligation to respect self-determination¹³⁶. Palestine stresses that “these violations are not merely the result of the occupation but are rather the foundation upon which the occupation rests”¹³⁷. In Saudi Arabia’s view, numerous measures adopted by Israel not only constitute grave violations of international obligations, but also “systematically and severely impede” the right of self-determination¹³⁸.

76. Chile considers the occupation as such to be illegal, because it is perpetuated intentionally by Israel in order to continue its illegal settlement policy and practices, and is not justified as a measure necessary for Israel’s protection; and because the settlements policy shows that occupation is aimed at annexation, while Israel has violated its obligation to act in

¹³³ See, for example, Written Statement of the African Union, para. 90; Written Statement of Algeria, pp. 27-30, 46; Written Statement of Bangladesh, paras. 30-31; Written Statement of Belize, paras. 31-34; Written Statement of Bolivia, p. 14; Written Statement of Brazil, para. 45; Written Statement of Chile, para. 119; Written Statement of Djibouti, paras. 5-31; Written Statement of Egypt, paras. 249, 270; Written Statement of the Gambia, paras. 1.8, 1.15, 1.31, 1.32; Written Statement of Guyana, para. 34; Written Statement of Indonesia, paras. 51-60; Written Statement of Kuwait, para. 27; Written Statement of Lebanon, para. 59; Written Statement of the League of Arab States, para. 44; Written Statement of Malaysia, para. 62; Written Statement of the Organization of Islamic Cooperation, para. 405; Written Statement of Qatar, Chapters 4 and 5, and para. 7.1. Written Statement of Saudi Arabia, para. 31; Written Statement of Senegal, p. 5; Written Statement of South Africa, paras. 95, 119, 140, 158; Written Statement of Syria, para. 31.

¹³⁴ See, for example, Written Statement of the African Union, para. 199; Written Statement of Algeria, p. 30; Written Statement of Bangladesh, paras. 12, 32-33; Written Statement of Bolivia, p. 14; Written Statement of Brazil, para. 50; Written Statement of Chile, para. 120; Written Statement of Djibouti, para. 53; Written Statement of Egypt, para. 298; Written Statement of the Gambia, para. 1.33; Written Statement of Guyana, para. 34; Written Statement of Indonesia, paras. 61-62; Written Statement of Kuwait, paras. 34-35; Written Statement of Lebanon, paras. 56, 59; Written Statement of the League of Arab States, para. 44; Written Statement of Malaysia, para. 66; Written Statement of the Maldives, para. 48; Written Statement of Oman, p. 5; Written Statement of the Organisation or Islamic Cooperation, para. 405; Written Statement of Palestine, paras. 6.19, 7.21-7.26, 7.50, 7.86; Written Statement of Qatar, para. 4.1; Written Statement of Saudi Arabia, para. 32; Written Statement of South Africa, para. 143; Written Statement of Syria, paras. 5, 32; Written Statement of Yemen, para. 42.

¹³⁵ Written Statement of Palestine, para. 6.4.

¹³⁶ *Ibid.*, para. 6.5. See also Written Statement of Qatar, para. 4.1; Written Statement of Yemen, paras. 39-41.

¹³⁷ Written Statement of Palestine, para. 6.18.

¹³⁸ Written Statement of Saudi Arabia, paras. 28, 42-49.

the best interests of the population under occupation¹³⁹. Lebanon is of the same view¹⁴⁰, while Algeria considers that the policies and practices of Israel put in question the legal status of the occupation¹⁴¹. The League of Arab States, for its part, looked at the illegality overall of the conduct of the occupation¹⁴², concluding that while the terms ‘illegal occupation’ and ‘unlawful occupation’ are ambiguous, they can denote existential illegality (for example, occupation as denial of self-determination, or occupation for invalid purposes, such as annexation); or they can refer simply to illegality in the conduct of occupation, such as discrimination on the grounds of race, or violations of freedom of expression and assembly¹⁴³. In its view, all acts by Israel in the Occupied Palestinian Territory lack a valid international legal basis and are an illegal exercise of authority¹⁴⁴. The Organisation of Islamic Cooperation¹⁴⁵, Guyana¹⁴⁶, the African Union¹⁴⁷, Pakistan¹⁴⁸, Gambia¹⁴⁹, Malaysia¹⁵⁰, Indonesia¹⁵¹, and Djibouti¹⁵², are of a similar view. In its detailed analysis, Qatar argues that Israel’s prolonged occupation – “the mere *existence* of the occupation” – is illegal as a whole, because it indefinitely violates self-determination, and because it constitutes a regime of apartheid¹⁵³.

77. States have thus given various explanations for the conclusion that Israel’s occupation as a whole is unlawful. The shades of emphasis do not detract from the ultimate conclusion; indeed they reinforce each other. In essence, the unlawfulness of the occupation is beyond doubt: by occupying the Occupied Palestinian Territory, including East Jerusalem, indefinitely, by annexing *de jure* or *de facto* large parts of it, and by preventing the Palestinian people from

¹³⁹ Written Statement of Chile, para. 119.

¹⁴⁰ Written Statement of Lebanon, paras. 60-63. See also Written Statement of Spain, para. 8.1.

¹⁴¹ Written Statement of Algeria, p. 52.

¹⁴² Written Statement of the League of Arab States, paras. 76-91.

¹⁴³ *Ibid.*, para. 92.

¹⁴⁴ *Ibid.*, paras. 93, 106-108.

¹⁴⁵ Written Statement of the Organisation of Islamic Cooperation, para. 405.

¹⁴⁶ Written Statement of Guyana, para. 34.

¹⁴⁷ Written Statement of the African Union, paras. 90-136.

¹⁴⁸ Written Statement of Pakistan, paras. 38-41.

¹⁴⁹ Written Statement of the Gambia, paras. 1.5-1.31.

¹⁵⁰ Written Statement of Malaysia, paras. 61-62.

¹⁵¹ Written Statement of Indonesia, paras. 51-60.

¹⁵² Written Statement of Djibouti, paras. 5-31.

¹⁵³ Written Statement of Qatar, paras 4.1-4.109.

exercising their right of self-determination, Israel is in fundamental breach of basic principles of international law, including the law of occupation.

78. Two specific points raised in the Written Statements merit particular attention.

79. First, in their Written Statements various States, including Jordan, distinguished between, on the one hand, the illegality of the occupation of the Occupied Palestinian Territory (the West Bank, including East Jerusalem, and Gaza) *ab initio* because of Israel's unlawful use of force, in contravention of the *jus ad bellum*, in June 1967; and, on the other hand, the illegality of the occupation today¹⁵⁴. The present request for an advisory opinion does not ask the Court to deal with the first of these, that is, the legality of the occupation *ab initio*.

80. Second, in its Written Statement, France suggests that to accept the illegality *per se* of an occupation could lead to the inapplicability of the legal regime of occupation, which would create an unreasonable result¹⁵⁵. But this is not so. The law of occupation does not cease to apply on a finding that Israel's occupation is unlawful *per se*. The legal consequence is that the occupation must be terminated as rapidly as possible. Notwithstanding that the occupation as a whole is unlawful and must be terminated, so long as the occupation continues in fact, the Occupied Palestinian Territory remains under the law of occupation. Israel cannot continue its occupation and, at the same time, relieve itself of its obligations under the applicable law.

81. Switzerland explains the position well, stating that

“Le droit de l’occupation et la légalité de l’occupation sont deux questions distinctes. L’occupation est une situation qui est régie par le droit international humanitaire alors que la légalité de celle-ci est régie par la Charte des Nations Unies ... Le droit de l’occupation continue donc de s’appliquer dans le Territoire palestinien indépendamment de la question de la légalité de l’occupation”¹⁵⁶.

Switzerland considers that it would be helpful if the Court were to pronounce on the consequences in international law that flow from the permanent character of the measures

¹⁵⁴ Written Statement of Jordan, Part One, note 327; Written Statement of Palestine, note 1042.

¹⁵⁵ Written Statement of France, para. 51.

¹⁵⁶ Written Statement of Switzerland, para. 51.

adopted by Israel, including demographic changes¹⁵⁷. As Switzerland puts it, the law of occupation applies independently of the legality of the occupation¹⁵⁸.

82. In Jordan's view, the continuing applicability of international humanitarian law and international human rights law is without prejudice to the unlawfulness of the occupation¹⁵⁹. Jordan rejects the United States' argument that "the second question rests on a faulty premise" and that the occupation cannot be considered unlawful since "the legal *status* of the occupation ... results from the fact of occupation alone"¹⁶⁰. It does not follow, as France seems to suggest, that to characterise the occupation as 'illicite' would lead to the absurd or unreasonable result of depriving the civilian population of the protection provided by the legal regime of occupation¹⁶¹. As noted elsewhere in France's Written Statement, occupation is a matter of fact¹⁶², and to characterise that fact as unlawful or illegal from the perspective of international law would not lead to a cessation of protection, the relevant obligations themselves deriving from the fact of control and authority over territory and inhabitants.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ Written Statement of Jordan, Part One, paras. 4.28, 4.40.

¹⁶⁰ Written Statement of the United States, paras. 4.2-4.6.

¹⁶¹ Written Statement of France, para. 51: "Le caractère prolongé d'une occupation, s'il est contraire au fait que celle-ci devrait être provisoire par nature, n'a pas pour conséquence de rendre celle-ci illicite *per se*. En effet, ce constat d'illicéité *per se* pourrait conduire à soutenir l'inapplicabilité du régime juridique de l'occupation. Cela aboutirait à un résultat, manifestement absurde ou déraisonnable...".

¹⁶² *Ibid.*, paras. 41, 49. In the view of the United States, "the legal status of the occupation under international humanitarian law results from *the fact of occupation* alone" (Written Statement of the United States, para. 4.2, emphasis added). The United States also argued that there was no basis in international law on which to determine whether the occupation had been rendered unlawful (*ibid.*, para. 4.6). However, that basis would appear to be established by other relevant juridical 'facts', such as annexation or the imposition of a regime of apartheid.

Conclusions

The Hashemite Kingdom of Jordan hereby reaffirms the Conclusions set out in its Written Statement¹⁶³:

For the reasons given in Parts One and Two of its Written Statement and in the present Written Comments, the Hashemite Kingdom of Jordan respectfully requests the Court:

- (1) To find that it has jurisdiction to give the advisory opinion requested in General Assembly resolution 77/247, and to comply with the request;
- (2) To answer Question (a) in the following manner:
 - (a) The policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, are in violation of the right of the Palestinian people to self-determination; of the law of occupation; of the prohibition of the acquisition of territory by force; of international human rights law, including the prohibition of discrimination; of international refugee law; and of other rules of international law, including those concerning the Holy Places in East Jerusalem and those relating to the prohibition of crimes against humanity;
 - (b) The legal consequences arising from these violations for Israel, for third States and for the United Nations and other international organizations are those provided for in the international law of responsibility for internationally wrongful acts;
 - (c) In particular:
 - (i) Israel is under an obligation to cease its internationally wrongful acts; this includes the obligation to cease its violations of international law applicable to the maintenance, preservation and, administration of and freedom of access to the Holy Places in East Jerusalem;

¹⁶³ Written Statement of Jordan, Part One, pp. 109-111, repeated in Part Two, pp. 152-155.

- (ii) All measures taken in violation of the Palestinian people's right to self-determination, including measures taken under Israeli law to alter the legal, geographic and demographic character and status of Jerusalem and of the Occupied Palestinian Territory as a whole, are null and void and have no legal validity;
- (iii) Israel is under an obligation to make full reparation for all injury caused by its internationally wrongful acts;
- (iv) All States are under an obligation not to recognize as lawful the situation created by Israel's internationally wrongful acts, and not to render aid or assistance in maintaining that situation;
- (v) All States are under an obligation to recognize the right of the Palestinian people to self-determination, including by exercising that right within a viable and independent State of Palestine;
- (vi) All States are under an obligation to cooperate, including with the United Nations, to bring to an end Israel's internationally wrongful acts;
- (vii) The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end Israel's internationally wrongful acts, taking due account of the Advisory Opinion;

(3) To answer Question (b) in the following manner:

- (a) The occupation by Israel of the Occupied Palestinian Territory, including East Jerusalem, is unlawful;
- (b) Israel is under an obligation to terminate the occupation as rapidly as possible;

- (c) All States are under an obligation not to recognize the illegal situation resulting from the illegal occupation of the Occupied Palestinian Territory, including East Jerusalem, and not to render aid or assistance in maintaining the situation created by the occupation;
- (d) All States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;
- (e) The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal occupation, taking due account of the Advisory Opinion.

Dr. Ahmad Ziadat
Minister of Justice
Representative of the Hashemite Kingdom of Jordan
25 October 2023

