INTERNATIONAL COURT OF JUSTICE

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

WRITTEN COMMENTS OF BELIZE

25 OCTOBER 2023

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INTRODUCTION

1. Belize seeks to assist the Court in relation to one further issue, which was not addressed in its Written Statement but which has been raised in a number of Written Statements submitted by other participants. This is the issue of a negotiated solution to the Israel-Palestine situation.

2. Written Statements from other participants addressed this issue in two different respects. First, in the context of examining whether the Court should answer the questions asked of it (*discretion*), some Written Statements contended that the existence of a framework for a negotiated solution is a compelling reason for the Court to decline to issue an Advisory Opinion, or to decline fully to answer the questions asked of it.[1] Second, when addressing the substance of the prospective Advisory Opinion (*content*), some Written Statements cautioned that the Court should answer the questions in a manner that does not conflict with or undermine the framework for a negotiated solution.[2]

3. Both of these arguments assume that the answers that the Court would provide if unconstrained by the postulated limitations would in some way conflict with or undermine the negotiation framework. Crucially, however, the Written Statements adopting this position did not examine the negotiation framework in order to explain how it could conflict with, or be undermined by, the Court issuing an Opinion or the content of such an Opinion.

4. Belize's Written Comments therefore examine the relationship between the framework for a negotiated solution and the questions asked of the Court.[3]

5. Belize's position, in summary, is that the existence of a framework for negotiations is irrelevant to the Court's task.

   (a) It is not a compelling reason for the Court to exercise its discretion to decline to answer, or answer fully, the questions asked of it (**Chapter 1**).

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1 See the references in footnote 31 below.

2 See the references in the footnotes to paras. 19-20, 22 and 41 below.

3 Defined terms used in Belize's Written Statement are adopted here.

(b) It does not affect the legal consequences of Israel's unlawful conduct, and thus would not change the Court's answers to the questions asked of it. As Belize explained in its Written Statement, Israel: (*i*) is in continuing breach of its obligations to comply with a number of peremptory norms; (*ii*) is in unlawful occupation of the Palestinian territory; and (*iii*) as a result of those breaches and that unlawful occupation, Israel must immediately end its occupation and violations of peremptory norms.[4] None of those conclusions is affected by the fact that there is a framework for negotiations. In particular, none of those conclusions is affected by arguments that the negotiation framework allegedly created an obligation for Israel and Palestine to negotiate with respect to permanent status issues, or a right for Israel to remain in the Palestinian territory until a negotiated solution is achieved (**Chapter 2**).

(c) The irrelevance of the negotiation framework to the answers that the Court would give to the questions asked follows from international law rules relevant to negotiations (**Chapter 3**).

6. It is necessary first to address the term "framework for a negotiated solution". The value of negotiations in achieving a just and lasting peace between Israel and Palestine has long been recognised. Various resolutions, documents and agreements have initiated or endorsed efforts towards that end. These resolutions, agreements and documents are sometimes loosely referred to collectively as a "framework for a negotiated solution" or a "negotiation framework". There is no agreed definition of what constitutes this framework. It is often said to have been established by or consist of the following documents:[5]

(a) UN Security Council Resolutions 242 (1967) and 338 (1973);[6]

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4 See the references in footnotes 44-46 below.

5 See, e.g., Written Statement of the Czech Republic, 20 July 2023, pp. 1-2; Written Statement of Nauru, undated, paras. 5, 10 and 12; Written Statement of the United States of America, 25 July 2023, paras. 1.7 and 2.3; Written Statement of the United Kingdom, 20 July 2023, paras. 9-10; Written Statement of Hungary, 25 July 2023, paras. 13-14 and 22; Written Statement of Morocco, July 2023, p. 4; Written Statement of Canada, 14 July 2023, para. 6.

6 UNSC Resolution 242, UN Doc. S/RES/242, 22 November 1967 (***S/RES/242 (1967)***); UNSC Resolution 338, UN Doc. S/RES/338, 22 October 1973 (***S/RES/338 (1973)***).

(b) the 1993 and 1995 agreements between Israel and the Palestinian Liberation Organisation (***PLO***) known as the Oslo Accords;[7] and

is sometimes also said to include other documents such as:

(c) the 1991 Madrid terms of reference, the 1994 Gaza-Jericho Agreement, the 1998 Wye River Memorandum, the 1999 Sharm el-Sheikh Memorandum, the 2002 Arab Peace Initiative, the 2003 Quartet Roadmap, the 2007 Joint Understanding and the 2023 Sharm el-Sheikh Joint Communiqué.[8]

7. In addressing the framework for a negotiated solution in these Written Comments, Belize deals with all of these documents.

8. Before proceeding further, Belize considers it necessary to acknowledge the violent events currently taking place in Israel, Gaza and the West Bank. All acts of violence targeting civilians are obviously unacceptable and constitute clear violations of international law. Israel's conduct in recent weeks demands particular attention. Belize wishes to express that it is gravely concerned by the failure of the international community to intervene to end Israel's prolonged illegal occupation, which was recognised by the UN Security Council in Resolution 242 (1967) as being necessary for a just and lasting peace.[9] Israel's prolonged occupation amounts to a continuing illegal act of aggression contrary to the *jus ad bellum*, which has been ongoing since 1967[10] and which is catalysing rounds of worsening hostilities against the protected Palestinian population under Israel's effective control.

9. Belize is alarmed by statements by Israel, the occupying Power, aimed at régime change, annexation and forcible transfer of civilians in occupied Gaza, in breach of

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7 Declaration of Principles on Interim Self-Government Arrangements, 13 September 1993, annexed to UN Doc. A/48/486–S/26560, 11 October 1993 (***Oslo I***); Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, reproduced in (1997) 36(3) *ILM* 557 (***Oslo II***) (together, the ***Oslo Accords***).

8 One or more of these documents are referred to in the Written Statements of the United States of America, the United Kingdom, Jordan, the Organisation of Islamic Cooperation, Nauru, Fiji, China, Egypt, Russia, Bolivia, Morocco and in the annexes to the Written Statement of Spain.

9 See para. 48(b) below. See also UNSC Resolution 2334, UN Doc. S/RES/2334, 23 December 2016 (***S/RES/2334 (2016)***), para. 9 (urging diplomatic efforts aimed at achieving a "comprehensive, just and lasting peace … on the basis of … an end to the Israeli occupation that began in 1967").

10 See Written Statement of Belize, 25 July 2023, para. 33.

international law, including Article 47 of the Fourth Geneva Convention.[11] On 7 October 2023, Israel's Prime Minister, Benjamin Netanyahu, stated: "I say to the residents of Gaza: Leave now because we will operate forcefully everywhere".[12] Cabinet Minister Gideon Sa'ar expressed that "Gaza must be smaller at the end of the war", "they have to lose this territory" because it "is the price of loss that the Arabs understand".[13] Referring to the mass forcible transfer of Palestinians across Gaza, on 14 October 2023 the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, warned that "Palestinians are in grave danger of mass ethnic cleansing and called on the international community to urgently mediate a ceasefire between warring Hamas and Israeli occupation forces".[14]

10. As of 21 October 2023, according to the UN Office for the Coordination of Humanitarian Affairs, some 4,385 Palestinians had been killed and 13,561 injured in Israel's then fifteen-day military offensive on Gaza.[15] A further estimated 1,400 Palestinians remain trapped under the rubble.[16] Israel is also continuing a concerted campaign of violence against Palestinians across the West Bank, where a further 84 Palestinians have been killed and 1,653 injured.[17] Israeli military forces continue to

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11 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, entered into force 21 October 1950, 75 UNTS 287 (***GC IV***), Article 47: "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory." On forcible transfer, see GC IV, Article 49. On the prohibition of annexation, see Written Statement of Belize, 25 July 2023, paras. 44-45.

12 Prime Minister of Israel, *X (formerly Twitter)*, 7 October 2023 (available here); Statement by Prime Minister Benjamin Netanyahu, Ministry of Foreign Affairs of Israel, 7 October 2023 (available here).

13 "Israeli minister: Gaza 'must be smaller at the end of war'", interview on Channel 12 News, recording reproduced by *TRT World*, 14 October 2023 (available here).

14 "UN expert warns of new instance of mass ethnic cleansing of Palestinians, calls for immediate ceasefire", *UN Press Release*, 14 October 2023 (available here).

15 UNOCHA, "Hostilities in the Gaza Strip and Israel | Flash Update #15", 21 October 2023 (available here).

16 WHO, "oPT Emergency Situation Report, Issue 6", 21 October 2023 (available here), p. 2.

17 UNOCHA, "Hostilities in the Gaza Strip and Israel | Flash Update #15", 21 October 2023 (available here).

carry out mass arrests and arbitrary administrative detentions, including the recent arrest of more than 60 Gazan Palestinian labourers trapped in the West Bank.[18]

11. Israel's 17-year land, sea and air blockade[19] of Gaza has already been declared an act of collective punishment against the Palestinian people.[20] There is evidence of strikes on an "unprecedented scale" and the destruction of entire residential neighbourhoods, including Rimal, Beit Hanoun and Beit Lahiya,[21] and a mounting catalogue of indiscriminate attacks on (or unlawfully targeting of) ambulances, hospitals, UNWRA schools and other buildings, mosques, churches, and places of refuge, amongst others.[22]

12. Statements by senior Israeli officials concerning the collective targeting of the civilian population of Gaza are alarming. This includes the statement on 9 October 2023 by Yoav Gallant, Israel's Minister of Defence, that Israel is "imposing a complete siege on Gaza. There will be no electricity, no food, no water, no fuel. Everything is closed. We are fighting human animals, and we are acting accordingly".[23] This sentiment was echoed by the Coordinator of the Government in the Territories, Major General Ghassan Alian, stating that: "Human beasts are dealt with accordingly. Israel has imposed a total blockade on Gaza, no electricity, no water, just damage. You wanted

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18 UNRWA, "Situation Report #9 on the situation in the Gaza Strip and the West Bank", 20 October 2023 (available here). On arbitrary arrests and detention in the West Bank more generally, see Written Statement of Belize, 25 July 2023, para. 56(b).

19 On the use of the term "blockade", see Written Statement of Belize, 25 July 2023, footnote 52.

20 See Written Statement of Belize, 25 July 2023, para. 56(e)(vi).

21 "IAF hits Gaza on 'unprecedented scale'; Strip's power plant shuts down", *The Times of Israel*, 11 October 2023 (available here); "Damage maps of Gaza's hard-hit areas since the start of the war", *The Washington Post*, 19 October 2023 (available here).

22 Statement of Volker Türk, UN High Commissioner for Human Rights, "UN Human Rights Chief Volker Türk on horrific killings at Al Ahli Arab Hospital in Gaza", 17 October 2023 (available here); UNRWA, "Situation Report #9 on the Gaza Strip and the West Bank (including East Jerusalem)", 20 October 2023 (available here); OCHA, "Hostilities in the Gaza Strip and Israel | Flash Update #6", 12 October 2023 (available here); "Ambulances hit during Israeli air attack in Gaza", *Al Jazeera*, 14 October 2023 (available here); Al-Haq, Al Mezan and PCHR, "Joint Urgent Appeal to UN Special Procedures on Journalists Killed While Reporting in Gaza, Highlights Israel in Breach of International Law", 13 October 2023 (available here); Al-Haq, Al Mezan and PCHR, "Al-Haq, Al Mezan, and PCHR Send Urgent Appeal to UN Special Procedures and the Commission of Inquiry on Israel's Total Warfare on Gaza's Civilian Population", 12 October 2023 (available here).

23 "Israeli Defense Minister Announces Siege On Gaza To Fight 'Human Animals'", *Huffington Post*, 9 October 2023 (available here). A similar statement has been made by Israel's Minister of Energy and Infrastructure, Israel Katz. See Al Mezan, "Urgent Action: Palestinian Human Rights Organisations Call on Third States to Urgently Intervene to Protect the Palestinian People Against Genocide", 18 October 2023 (available here), linking and translating the statements.

hell – you will get hell".[24] At the same time, a massive evacuation order for 1.1 million people to leave northern Gaza and move south, has been carried out in the absence of any discernible military objective,[25] while the evacuation routes and people in the south have also been subject to relentless bombing campaigns.[26] According to the WHO, the "[e]vacuation orders by Israel to hospitals in northern Gaza are a death sentence for the sick and injured".[27]

13. To secure peace, international law must prevail. A group of UN Special Rapporteurs issued a warning on 19 October 2023: "We are sounding the alarm: There is an ongoing campaign by Israel resulting in crimes against humanity in Gaza. Considering statements made by Israeli political leaders and their allies, accompanied by military action in Gaza and escalation of arrests and killing in the West Bank, there is also a risk of genocide against the Palestinian People".[28] Belize is compelled at this juncture to express its grave concern in respect of indications that war crimes, crimes against humanity and genocide (including intent to commit and incitement to genocide) are being, or may be, committed against the people of Gaza.[29] The international law

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24 Coordinator of the Government in the Territories (COGAT), *X (formerly Twitter)*, 10 October 2023 (available here). The statement is also linked and translated in Al Mezan, "Urgent Action: Palestinian Human Rights Organisations Call on Third States to Urgently Intervene to Protect the Palestinian People Against Genocide", 18 October 2023 (available here).

25 Contrary to GC IV, Article 49(2), which limits any evacuations of civilians within an occupied territory to situations in which "the security of the population or imperative military reasons so demand".

26 See Al Mezan, "Urgent Action: Palestinian Human Rights Organisations Call on Third States to Urgently Intervene to Protect the Palestinian People Against Genocide", 18 October 2023 (available here); "Gaza civilians afraid to leave home after bombing of 'safe routes'", *The Guardian*, 15 October 2023 (available here); "'The strikes are everywhere': Palestinians flee south in Gaza but cannot escape bombs", *The Guardian*, 21 October 2023 (available here).

27 WHO, "Evacuation orders by Israel to hospitals in northern Gaza are a death sentence for the sick and injured", 14 October 2023 (available here).

28 "Gaza: UN experts decry bombing of hospitals and schools as crimes against humanity, call for prevention of genocide", *UN Press Release*, 19 October 2023 (available here). See also the warning of 800 scholars, including of genocide and Holocaust studies, "about the possibility of the crime of genocide being perpetrated by Israeli forces against Palestinians in the Gaza Strip" (see "Public Statement: Scholars Warn of Potential Genocide in Gaza", *Opinio Juris*, 18 October 2023 (available here)). See further the report of the Centre for Constitutional Rights, "Israel's Unfolding Crime of Genocide of the Palestinian People & U.S. Failure to Prevent and Complicity in Genocide", 18 October 2023 (available here). A letter was sent by genocide scholars and 100 organisations to the Prosecutor of the International Criminal Court calling for, among other things, an investigation into Israeli officials' statements constituting incitement to genocide (see Letter addressed to Mr. Karim A.A. Khan KC, Prosecutor of the International Criminal Court, 19 October 2023 (available here)).

29 See "A Textbook Case of Genocide", *Jewish Currents*, 13 October 2023 (available here).

prohibitions against these acts are peremptory, and their violation gives rise to obligations on the part of all States to cooperate in bringing such violations to an end.[30]

[30] See Belize's Written Statement, 25 July 2023, paras. 83-84.

CHAPTER 1. THE FRAMEWORK FOR A NEGOTIATED SOLUTION IS NOT A COMPELLING REASON FOR THE COURT TO DECLINE TO ANSWER FULLY THE QUESTIONS ASKED OF IT

14. In expressing their support for a two-State negotiated solution, a minority of States have proposed that the Court should decline to issue an Advisory Opinion or, in issuing it, stop short of fully answering the questions asked, in order not to undermine or circumvent the framework for a negotiated solution.[31] The consistent jurisprudence of the Court is that only "compelling reasons" may lead the Court to refuse its opinion in response to a request falling within its jurisdiction.[32] In the present case, there are no such compelling reasons. The Court should reject the argument calling for it to decline to answer fully the questions asked of it, for the following reasons.

15. First, the UN General Assembly has seen fit to seek answers to the questions posed in the request, and it is for the UN General Assembly to decide how to use those answers to assist it in the discharge of its functions. It is not for the Court to determine whether the answers to those questions are needed by, or would be useful for, the UN General Assembly.[33] In particular, it is not for the Court to partially answer the questions asked by reference to how a political process may or may not be conducted in the future. That would be an inappropriate exercise of the Court's advisory jurisdiction. There is, moreover, no basis on which the Court could objectively judge the impact of its answers, whether full or partial, on any future negotiations.[34]

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31 As to participants that consider the Court should decline to answer the questions at all, see, e.g., the Written Statements of Canada, Fiji, Hungary, Israel, Italy, Togo, the United Kingdom and Zambia. As regards participants that say the Court should stop short of fully answering the questions, see, e.g., Written Statement of Norway, 7 July 2023, p. 2 (asking the Court to depart from the language of the questions asked and only clarify the legal framework for negotiations), and see also the Written Statements referred to in footnote 41 below, which contend that the Court should alter the content of its Advisory Opinion so as to preserve the negotiation framework, which could also be construed as an argument that the Court should stop short of fully answering the questions asked.

32 See, e.g., *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, *Advisory Opinion*, *I.C.J. Reports 2019* (***Chagos Advisory Opinion***), p. 113, para. 65; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *Advisory Opinion*, *I.C.J. Reports 2010* (***Kosovo Advisory Opinion***), p. 416, para. 30; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, *I.C.J. Reports 2004* (***Wall Advisory Opinion***), p. 156, para. 44.

33 *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion*, *I.C.J. Reports 1996* (***Nuclear Weapons Advisory Opinion***), p. 237, para. 16; *Kosovo* Advisory Opinion, pp. 417-418, para. 34; *Wall* Advisory Opinion, p. 163, paras. 61-62.

34 *Nuclear Weapons* Advisory Opinion, p. 237, para. 17; *Kosovo* Advisory Opinion, p. 418, para. 35; *Wall* Advisory Opinion, pp. 159-160, paras. 51-54.

16. Second, the argument is premised on the assumption that by answering, fully or at all, the questions asked by the UN General Assembly, the Court would undermine efforts to achieve a negotiated solution.[35] This is incorrect. The only way that fully answering the questions asked could undermine negotiations would be if the Court's answers would dictate outcomes on issues that the parties have free rein to negotiate, such that it would unjustifiably reduce the space for meaningful negotiations. But as explained below in **Chapter 3**, Israel and Palestine are not unconstrained. Any negotiations that take place must be consistent with international law. International law imposes rules relevant to the negotiations, including that compliance with peremptory norms is non-negotiable.[36] By providing complete answers to the questions, on the basis of international law, quite apart from not undermining negotiations, the Court will be *assisting* the UN General Assembly in its efforts to facilitate them taking place in a lawful, realistic and productive manner.[37] It is not credible to suggest otherwise.

17. Third, the argument suggests that declining to answer or stopping short of fully answering the questions asked would have positive effects on achieving a negotiated solution. This, however, presupposes that the parties are ready and willing to conclude a negotiated settlement and that the Court should, in essence, not risk interfering. That premise is not an accurate reflection of the current state of affairs. The negotiation framework aimed at achieving a just, lasting and comprehensive peace settlement has been stalled for years.[38] The prospect of the parties engaging in productive and

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35 Various suggestions are made as to how negotiations could be undermined, including: (*i*) general speculative suggestions that an Advisory Opinion could damage relations between Israel and Palestine (see, e.g., Written Statement of the United States of America, 25 July 2023, para. 3.20); (*ii*) that establishing the precise scope of Israel's responsibility may run counter to creating conditions for negotiations (see Written Statement of Russia, 24 July 2023, p. 27); (*iii*) that, by determining the issues on which it has been asked to opine, the Court could "prejudice" the outcome of negotiations between Israel and Palestine (see, e.g., Written Statement of Zambia, undated, p. 2); and (*iv*) because the Court is only being asked to opine on some of the matters that are relevant to negotiations (see, e.g., Written Statement of Fiji, July 2023, p. 3).

36 See para. 66 below.

37 *Contra* Written Statement of Togo, 24 July 2023, pp. 2-3 (suggesting the main purpose of the request for an Advisory Opinion is to have the negotiation framework abandoned). See also, agreeing that the Advisory Opinion will facilitate negotiations: Written Statement of the United Arab Emirates, 25 July 2023, para. 8; Written Statement of Colombia, 24 July 2023, paras. 3.16-3.17 and 4.11; Written Statement of Qatar, 25 July 2023, para. 6.105; Written Statement of Cuba, 24 July 2023, pp. 3-4; Written Statement of Norway, 7 July 2023, p. 2.

38 See Written Statement of Jordan, 25 July 2023, para. 3.53 (noting that since the last peace talks in 2014, there has been no progress on reaching a permanent settlement). See further other participants' recognition that the progress of negotiations has stalled: Written Statement of Qatar, 25 July 2023, para. 6.105; Written Statement of Ireland, 25 July 2023, para. 10; Written Statement of Bangladesh, undated, para. 8.

comprehensive negotiations within a relevant timeframe has decreased even further in the wake of the recent violent escalations across Israel, Gaza and the West Bank, occurring in the context of Israel's entrenchment of its annexation and apartheid policies and the struggle of the Palestinian people against a 56 year-long illegal and oppressive occupation.[39] The Court should therefore not countenance any path that may further contribute to the stagnation of negotiations in circumstances where the UN General Assembly has determined that the Court answering the questions it has posed would assist it in the exercise of its own functions to facilitate a peaceful solution to the Israel-Palestine situation.

18. The existence of the framework for a negotiated solution is therefore not a compelling reason for the Court to decline to issue the Advisory Opinion or to decline fully to answer the questions asked of it.

[39] See also footnote 158 below.

CHAPTER 2. THE FRAMEWORK FOR A NEGOTIATED SOLUTION IS IRRELEVANT TO THE ANSWERS THE COURT WOULD GIVE TO THE QUESTIONS ASKED OF IT

A. INTRODUCTION

19. As explained in **Chapter 1**, the Court should fully answer the questions asked of it. The Court's answers to those questions will be based on the relevant rules of international law. To the extent that there is a non-binding *political* (as opposed to legally-binding) framework for negotiations, that is evidently irrelevant to the content of the Advisory Opinion to be issued by the Court. However, a small number of participants have taken the position that there is a *legally-binding* framework for negotiations.[40] These participants have urged the Court to be careful to ensure that any Advisory Opinion rendered "respects" and is "in line with" the negotiation framework.[41] Crucially, however, the handful of Written Statements adopting this position do not clearly explain how they consider the negotiation framework gives rise to rights and obligations that would impact the answers to the questions asked of the Court.

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[40] See, e.g., Written Statement of Nauru, undated, para. 3 ("Nauru is of the view that there is an established legal framework for the resolution of the Israeli-Palestinian conflict"); Written Statement of Fiji, July 2023, p. 2 ("the binding legal framework established specifically to resolve the Palestinian-Israeli conflict"); Written Statement of Hungary, 25 July 2023, para. 25 (referring to the "established legal framework" for negotiations); Written Statement of Israel, 24 July 2023, p. 5 ("the established legal framework governing the Israeli-Palestinian conflict and its negotiated resolution"); Written Statement of Togo, 24 July 2023, p. 2 ("le cadre juridique établi pour parvenir à la paix israélo-palestinienne"); Written Statement of Zambia, undated, p. 1 ("the established legal framework for the resolution of their conflict").

[41] See, e.g., Written Statement of Russia, 24 July 2023, para. 43 (refers to "the universally recognized international legal framework of the Middle East Peace Process" and considers that "[a]ny advisory opinion that the Court will deliver will have to be in line with this framework and contribute to its implementation") and see also para. 82; Written Statement of the United States of America, 25 July 2023, paras. 3.3, 3.14 and 5.6 (calls on the Court to "address the referral request in a manner that respects the established framework"; "The referral therefore places the Court in the unenviable position of having to consider how to address the potentially far-reaching questions without disturbing the established negotiating framework"; "It is imperative for the Court to ensure that its opinion, even if addressing legal consequences of alleged violations of international law, is tailored to preserve the parties' ability to negotiate peace and a two-State solution consistent with the established framework"); Written Statement of Italy, undated, para. 5 (refers to "the established legal framework for the resolution of the conflict" and "respectfully submits that the Court carefully consider how to exercise its functions … so as to preserve the parties' ability to negotiate peace and a two-State solution consistent with the framework"); Written Statement of the Czech Republic, 20 July 2023, p. 3 ("the answers should not be construed as allowing departure from the established legal framework"); Written Statement of Guatemala, July 2023, paras. 46 and 48 ("Such a mandatory framework enjoys the endorsement of the international community and of the Security Council. … Guatemala wishes to request the Court that any advisory opinion it may decide to furnish carefully considers the above-mentioned bilateral negotiations framework and contribute to its prompt implementation").

20. Those Written Statements appear to make two arguments about such rights and obligations allegedly created by the framework for negotiations. The first is that Israel and Palestine are subject to a legally-binding obligation to negotiate on certain issues, specifically what are described as "permanent status issues".[42] This phrase is derived from Article V of Oslo I and includes: "Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest". The second is that Israel has a 'right to remain' in the Palestinian territory, and to continue to exercise authority and control over that territory, until there is a negotiated solution.[43]

21. In this Chapter, Belize explains that the negotiation framework is irrelevant because it does not change the answers that would otherwise be given to the questions asked of the Court. As Belize explained in its Written Statement, Israel: (*i*) is in continuing breach of its obligations to comply with a number of peremptory norms;[44] (*ii*) is in unlawful occupation of the Palestinian territory;[45] and (*iii*) as a result of those breaches and that unlawful occupation, Israel must immediately end its occupation.[46] None of those conclusions is affected by the fact that there is a framework for negotiations. In particular, none of those conclusions is affected by arguments that the negotiation framework allegedly created rights and obligations that bind Israel and Palestine. **Section B** explains that Israel and Palestine are not subject to an obligation to negotiate, but even if they were (which they are not), it would not affect the legal consequences of Israel's unlawful conduct and therefore would be irrelevant to the Court's task. **Section C** demonstrates that Israel has no 'right to remain' in the Palestinian territory until a negotiated solution is achieved, but even if it did have such a right (which it does not), that would not prevail over peremptory obligations that require Israel's complete and immediate withdrawal. The existence of such a right would not, therefore, affect the legal consequences of Israel's unlawful conduct and therefore would be irrelevant to the Court's task.

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42 See para. 22 and the references in footnote 48 below.

43 See para. 41 and the references in footnote 102 below.

44 Written Statement of Belize, 25 July 2023, paras. 19-24, 33-34, 36-41, 47-52, 66-73 and 83.

45 Written Statement of Belize, 25 July 2023, paras. 31-34 and 96-99.

46 Written Statement of Belize, 25 July 2023, paras. 33, 76-78 and 103.

B. THE IRRELEVANCE OF ANY OBLIGATION TO NEGOTIATE

22. A number of Written Statements contend that the framework for a negotiated solution is legally binding,[47] and appear to argue that it imposes an obligation to negotiate on Israel and Palestine.[48] However, Israel and Palestine are not subject to any extant obligation to negotiate (**subsection 1**). Moreover, even if there were some obligation to negotiate (which there is not), it would not need to be taken into account in the answers to be given by the Court because it could not affect Israel's duty to comply with obligations that it has breached that require its complete and immediate withdrawal from the Palestinian territory (**subsection 2**).

1. Palestine and Israel are not subject to an obligation to negotiate

23. No obligation to negotiate has been imposed upon Israel and Palestine by the UN Security Council (**subsection a**). Nor are they subject to any extant obligation to negotiate created by agreement (**subsection b**).

a. No obligation to negotiate by virtue of UN Security Council Resolutions 242 and 338

24. UN Security Council Resolutions 242 (1967) and 338 (1973) do not impose an obligation on Israel and Palestine to negotiate for three reasons:

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47 See footnote 40 above.

48 See, e.g., Written Statement of Russia, 24 July 2023, p. 27 ("Israel and Palestine are under an obligation to conduct, in good faith and without delay, negotiations aimed at reaching a final status settlement"); Written Statement of the African Union, 25 July 2023, para. 154 ("these provisions from the Oslo Accords constitute a *pactum de negotiando* requiring both parties to negotiate in good faith to reach an agreement"); Written Statement of Guatemala, July 2023, para. 46 ("the distinct and subsequent frameworks for a negotiated outcome of the Palestine question and their current applicability to the parties, which include the requirement for the parties to resolve through direct negotiations the matter before the Court"); Written Statement of Nauru, undated, para. 14 ("Israel and Palestine have both committed to resolving the conflict and their competing claims through good faith negotiations"). This point is also raised by a number of Written Statements in the context of their arguments relating to the Court's discretion. Those Written Statements contend that the UN General Assembly's request concerns a bilateral dispute and that Israel and Palestine have not consented to the jurisdiction of the Court, but rather, they have agreed to a different mode of dispute settlement, negotiations (e.g. Written Statement of Zambia, undated, p. 2 ("Israel, which expressly committed to negotiate a settlement through direct negotiations with the Palestinian side"); Written Statement of Israel, 24 July 2023, p. 3 ("the two sides have agreed to resolve through direct negotiations precisely the subject-matter placed before the Court")). That argument relating to the Court's discretion is adequately responded to in Written Statements already before the Court. See, e.g., Written Statement of South Africa, 25 July 2023, paras. 26-38; Written Statement of Luxembourg, 20 July 2023, paras. 20-23; Written Statement of Russia, 24 July 2023, paras. 19-22; Written Statement of China, 25 July 2023, paras. 12-15; Written Statement of France, 25 July 2023, paras. 15-16; Written Statement of Jordan, 25 July 2023, paras. 2.12-2.15; Written Statement of Switzerland, 17 July 2023, paras. 15-17.

(a) First, an examination of the content of the resolutions makes plain that they do not impose an obligation to negotiate on Israel and Palestine.

(b) Second, at the time of the adoption of the two resolutions, Palestine was not yet a State,[49] let alone a Member State of the UN, and therefore the UN Security Council could not impose an obligation to negotiate on it.

(c) Third, even now, Palestine is a non-Member Observer State of the UN, not a Member State, and is therefore not obliged to comply even with mandatory decisions of the UN Security Council.[50]

25. As to the first of these reasons, which is the only one requiring elaboration, each of the two resolutions is addressed in turn immediately below.

26. Resolution 242 (1967) was adopted following the Third Arab-Israeli (the Six-Day) War in June 1967, which resulted in the occupation by Israel of large swathes of territory, including all of the Palestinian territory. In that resolution, the UN Security Council unanimously emphasised the "inadmissibility of the acquisition of territory by war" and the commitment of all UN Member States to act in accordance with Article 2 of the UN Charter.[51] The key operative paragraphs of that resolution read:

> "1. *Affirms* that the fulfilment of the Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:
>
> (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;
>
> (ii) 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;
>
> 2. *Affirms further* the necessity

[49] The Palestine National Council proclaimed the establishment of the State of Palestine in 1988. See Letter dated 18 November 1988 from the Permanent Representative of Jordan to the United Nations addressed to the Secretary-General, UN Doc. A/43/827–S/20278, 18 November 1988.

[50] UN Charter, Article 25 ("The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter").

[51] S/RES/242 (1967), preambular paras. 2-3.

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;

3. *Requests* the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution".[52]

27. The terms of this resolution and the discussion leading to it make clear that it does not impose an obligation to negotiate.[53]

(a) First, the resolution does not state that negotiations must occur. To the contrary, the resolution uses permissive language in identifying principles and outcomes that "*should*" be included in any peace agreement.[54]

(b) Second, the affirmation in operative paragraph 1 that the "fulfilment of the Charter principles requires the establishment of a just and lasting peace" at most restates the duty in Articles 2(3) and 33(1) of the UN Charter that Member States "shall settle their international disputes by peaceful means". As the Court has recognised, these provisions do not impose an obligation on Member States to negotiate.[55]

(c) Third, the resolution requests the designation of a Special Representative to "*promote* agreement and assist *efforts* to achieve a peaceful and accepted settlement",[56] which demonstrates that the UN Security Council supported

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52 S/RES/242 (1967), paras. 1-3.

53 On the interpretation of UN Security Council resolutions, see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion, I.C.J. Reports 1971* (***Namibia Advisory Opinion***), p. 53, para. 114.

54 S/RES/242 (1967), para. 1 (emphasis added).

55 *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Judgment, I.C.J. Reports 2018* (***Obligation to Negotiate Access to the Pacific Ocean***), pp. 560-561, paras. 165-166. *Cf.* Written Statement of France, 25 July 2023, para. 98.

56 Emphasis added.

negotiations as an appropriate way to achieve a "just and lasting peace", but imposed no obligation on the States concerned to that end.

(d) Fourth, that the resolution does not impose a binding obligation to negotiate is consistent with the debates leading to its conclusion, which show that the issue of direct negotiations was deliberately excluded.[57]

28. Similarly, Resolution 338 (1973) imposes no obligation on Israel and Palestine to negotiate. It was adopted during the Fourth Arab-Israeli (the Yom Kippur/Ramadan) War in October 1973, fought between Israel and a coalition of States led by Egypt and Syria (Jordan, Lebanon, Iraq, Algeria, Kuwait and Sudan, among others). After calling upon the "parties to the present fighting" to cease all military activity, the resolution:

> "2. *Calls upon* the parties concerned to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts;
>
> 3. *Decides* that, immediately and concurrently with the cease-fire, negotiations shall start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East."[58]

29. Resolution 338 was capable of binding only Israel and *other warring UN Member States*[59] — i.e. not Palestine.[60] Moreover, the Member States concerned were called upon simply to "*start* … the implementation of Security Council resolution 242" and

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57 This was recalled by Iraq: "the old position of direct negotiations … was expressly excluded from the resolution of 22 November 1967—excluded not by accident but deliberately excluded in the long weeks and months of discussions and deliberations that preceded the adoption of the resolution". See UNSCOR, 1407th meeting, UN Doc. S/PV.1407, 24 March 1968, para. 98. The resolution instead provided for contacts between the States concerned to be established and maintained through a Special Representative designated by the UN Secretary-General. See S/RES/242 (1967), para. 3 (quoted in para. 26 above).

58 S/RES/338 (1973), paras. 1-3.

59 UN Charter, Article 25 ("The *Members of the United Nations* agree to accept and carry out the decisions of the Security Council in accordance with the present Charter" (emphasis added)).

60 This is also consistent with the fact that references to Resolution 338 appeared in numerous UN Security Council resolutions concerning the situation pending between Israel and each of Egypt and Syria for at least the next 17 years following 1973, often calling for the "implementation" of Resolution 338. These resolutions were concerned, in particular, with the UN peacekeeping and observer forces stationed between those States. See, as illustrative examples: UNSC Resolution 438, UN Doc. S/RES/438, 23 October 1978 (regarding the UN Emergency Force stationed between Egypt and Israel); UNSC Resolution 481, UN Doc. S/RES/481, 26 November 1980 (regarding the UN Disengagement Observer Force stationed between Israel and Syria). In contrast, references to Resolution 338 did *not* appear in UN Security Council resolutions concerning Palestine during that same period. It was not until 1990 that the UN Security Council began referring to Resolution 338 in the context of Palestine specifically (the first resolutions were: UNSC Resolution 672, UN Doc. S/RES/672, 12 October 1990 and UNSC Resolution 1322, UN Doc. S/RES/1322, 7 October 2000).

to "*start*" negotiations directed towards "a just and durable peace".[61] As was the case with Resolution 242, the negotiations envisaged were not direct negotiations between the States involved. During the drafting of the resolution, multiple States made the point that the negotiations to be started under "appropriate auspices", were negotiations under UN auspices.[62]

30. The Security Council therefore did not, through Resolutions 242 or 338, impose an obligation to negotiate on Israel and Palestine.

b. No obligation to negotiate by virtue of Israel-Palestine documents and agreements

31. An examination of the documents issued by, and agreements concluded between, Israel and Palestine[63] from 1993 to 2023 confirm that the States are not subject to an *extant* obligation to negotiate. Israel and Palestine *were* subject to an obligation to negotiate on relevant issues by virtue of the Oslo Accords, but that obligation was temporally limited, expired on 4 May 1999 without the envisaged agreement having been concluded, and is therefore no longer extant. All subsequent documents and agreements involving references to negotiations were expressions of political will and did not constitute a legally-binding obligation to negotiate.

32. Each of the relevant documents and agreements will be addressed in turn.

33. Oslo I, concluded on 13 September 1993, did create an obligation to negotiate, but that obligation existed only within the window of a five-year transitional period:

(a) In its preamble, Oslo I recorded that the parties "agree that it is time to … strive to … achieve a just, lasting and comprehensive peace settlement".

(b) Article I set out the "aim of the negotiations" as being "to establish a Palestinian Interim Self-Government Authority, the elected Council (the 'Council'), for the Palestinian people in the West Bank and the Gaza Strip, *for a transitional period*

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61 Emphasis added.

62 See, e.g., UNSCOR, 1747th meeting, UN Doc. S/PV.1747, 21 October 1973, para. 165 (Guinea): "the negotiations envisaged in paragraph 3 of the draft will be carried out at the United Nations, through the United Nations". See also para. 61 (United Kingdom), para. 67 (France), para. 124 (Peru), para. 147 (Sudan) and para. 183 (Yugoslavia).

63 See para. 6 above on what is generally considered to constitute part of the framework for negotiations.

not exceeding five years, leading to a permanent settlement based on Security Council resolutions 242 (1967) and 338 (1973)."[64]

(c) The agreement provided, among other things, three relevant obligations to negotiate. The parties were to: (*i*) negotiate and *conclude* an agreement on Israel's withdrawal from Gaza and the Jericho area, which they subsequently did;[65] (*ii*) negotiate and *conclude* an agreement on the five-year interim period, which they subsequently did;[66] and (*iii*) *commence* negotiations with a view to achieving the "permanent settlement" referred to in Article I.

(d) Regarding the obligation to negotiate in point (*iii*):

(i) The source of the obligation was Article V(2), which stated: "Permanent status negotiations will commence … not later than the beginning of the third year of the interim period".

(ii) The matters to be covered in the negotiations were specified in Article V(3) as the "remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest."[67]

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64 Emphasis added.

65 Oslo I, Article XIV and Annex II, para. 1; Agreement on the Gaza Strip and the Jericho Area, 4 May 1994 (available here) (***1994 Gaza-Jericho Agreement***).

66 Oslo I, Article VII. See also Article III(2). The agreement on the interim period was Olso II, discussed below.

67 This reference to "borders" may be the basis on which Fiji contends that the Court could not determine the legality of Israel's settlements in the Palestinian territory because the issue of sovereignty over that territory has not yet been settled in a peace agreement. See Written Statement of Fiji, July 2023, pp. 6-7, stating, among other things: "The sovereignty of these territories is, arguably, *in abeyance* until such a time as a peace agreement is reached" (emphasis in original). The astounding suggestion that Israel's settlements might be lawful stands in blatant defiance of the true position under international law, which is that all Israel's settlements in the Palestinian territory are illegal, as recognised by the Court and numerous UN bodies, including the UN Security Council. See Written Statement of Belize, 25 July 2023, para. 36. On the duty of UN Member States to act appropriately where the UN Security Council has declared a situation to be illegal, see *Namibia* Advisory Opinion, p. 52, para. 112: "It would be an untenable interpretation to maintain that, once such a declaration had been made by the Security Council under Article 24 of the Charter, on behalf of all member States, those Members would be free to act in disregard of such illegality or even to recognize violations of law resulting from it. When confronted with such an internationally unlawful situation, Members of the United Nations would be expected to act in consequence of the declaration made on their behalf."

(iii) As to the start of the five-year interim period, Article V(1) specified that this "transitional period" was to commence from Israel's withdrawal from Gaza and the Jericho area, but the parties later agreed that it would commence from the date of the signing of the withdrawal agreement on 4 May 1994.[68] The "beginning of the third year of the interim period" by which time permanent status negotiations had to commence was therefore 4 May 1996.[69] The five-year interim period accordingly expired on 4 May 1999.[70]

(iv) This obligation to negotiate imposed by Oslo I is clearly one of conduct, not of result.[71] It required the parties to "commence" negotiations on the specified issues on or before 4 May 1996.

(v) It is also clear that the obligation was limited in time. The agreement envisaged the interim, transitional period as "leading to a permanent settlement", which would commence no later than the end of that five-year period.[72] The obligation to negotiate therefore persisted only until the end of that five-year period, i.e. until 4 May 1999. It was because Oslo I envisaged a permanent settlement being reached within the five-year transitional period that it made no provision for an obligation to negotiate persisting beyond that point in time. After 4 May 1999, Oslo I therefore did not subject the parties to an obligation to negotiate.[73]

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68 Oslo I, Article V(1); 1994 Gaza-Jericho Agreement, Article XXIII(3), setting the date of the signing of that withdrawal agreement as the date for the commencement of the five-year interim period.

69 This was confirmed by Oslo II, discussed below. See Oslo II, preambular para. 6 and Article XXXI(5).

70 This is confirmed by the 1998 Wye River Memorandum discussed below, Section IV of which refers to the "goal of reaching an agreement by May 4, 1999."

71 See *Obligation to Negotiate Access to the Pacific Ocean*, p. 538, para. 87. This is also clear when comparing Article V(2) to other provisions in Oslo I that do impose an obligation of result, such as Annex II, para. 1: "The two sides will conclude and sign … an agreement on the withdrawal of Israeli military forces from the Gaza Strip and Jericho area."

72 Oslo I, Article I ("a transitional period not exceeding five years, leading to a permanent settlement"). Eminent jurists agree. See, e.g., Benvenisti, "The Israeli-Palestinian Declaration of Principles: A Framework for Future Settlement" (1993) 4(4) *EJIL* 542, p. 551: "foresees a final settlement of the conflict, which will commence no later than the end of the five-year transitional period".

73 This is not an argument that Oslo I itself terminated upon 4 May 1999; only that a proper interpretation of the obligation to negotiate in Oslo I is that it expired on that date.

34. Oslo II, concluded on 28 September 1995, was the agreement on the interim period required to be concluded under Oslo I.[74] This agreement reaffirmed "that the negotiations on the permanent status … will lead to the implementation of Security Council Resolutions 242 and 338", i.e. a "just and durable peace".[75] It also, among other things, set the start date of the interim period as 4 May 1994,[76] confirmed the date by which the permanent status negotiations were to commence as 4 May 1996,[77] but added nothing to the content of the obligation to negotiate contained in Oslo I.[78]

35. Negotiations on permanent status issues were formally launched in early May 1996,[79] but soon faced difficulties. Israel and Palestine nonetheless endeavoured to reach an agreement by the 4 May 1999 deadline. In 1998, in the non-binding Wye River Memorandum, they stated that: "The two sides will immediately resume permanent status negotiations on an accelerated basis and will make a determined effort to achieve the mutual goal of reaching an agreement by May 4, 1999."[80] Ultimately, the two sides were unable to reach an agreement by that date, i.e. the end of the five-year transitional period.[81]

36. Since 4 May 1999, there have been various negotiations between Israel and Palestine, but they have been conducted as a matter of political will and not pursuant to any legal obligation to negotiate. In particular:

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74 See para. 33(c) above.

75 Oslo II, preambular para. 6. See paras. 26 and 28 above for the relevant text of the resolutions.

76 Oslo II, preambular para. 5 and Article III(4), confirming Article XXIII(3) of the 1994 Gaza-Jericho Agreement.

77 Oslo II, preambular para. 6 and Article XXXI(5).

78 See Oslo II, Article XXXI(5), including its repetition of the same issues to be addressed in the negotiations as were identified in Oslo I, Article V(3). These were phrased slightly differently in Article XVII as "Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis".

79 See Israel-Palestinian Joint Communiqué, Taba, 6 May 1996 (available here).

80 The Wye River Memorandum, 23 October 1998 (available here) (***1998 Wye River Memorandum***), Section IV.

81 See generally, Written Statement of Jordan, 25 July 2023, paras. 3.29-3.30.

(a) On 4 September 1999, in the non-binding Sharm el-Sheikh Memorandum,[82] Israel and the PLO stated that they "will resume the Permanent Status negotiations in an accelerated manner and will make a determined effort to achieve their mutual goal of reaching a Permanent Status Agreement" for up to one year, starting no later than 13 September 1999.[83] Evidently, no final agreement was reached by 13 September 2000.[84]

(b) On 27 November 2007 at the Annapolis Conference, United States President George W. Bush read a non-binding "Joint Understanding" reached by Israel and the PLO, in which the parties "agree[d] to immediately launch good-faith bilateral negotiations in order to conclude a peace treaty, resolving all outstanding issues" and to "make every effort to conclude an agreement before the end of 2008".[85] No final agreement was reached by the end of 2008 or otherwise.[86]

(c) On 19 March 2023, the non-binding Sharm El Sheikh Joint Communiqué was adopted.[87] It was a joint communiqué setting out points of agreement between the "five Parties": Egyptian, Jordanian, Israeli, Palestinian and United States' officials.[88] In the Communiqué, Israel and the Palestinian National Authority "reaffirmed", among other things, "their agreement to address all outstanding issues through direct dialogue", and the five "Parties reaffirmed the importance

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82 The Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations, 4 September 1999 (available here) (***1999 Sharm el-Sheikh Memorandum***).

83 1999 Sharm el-Sheikh Memorandum, paras. 1(a), 1(d) and 1(e).

84 See UN Committee on the Exercise of the Inalienable Rights of the Palestinian People, "The Origins and Evolution of the Palestine Problem: Part V (1989-2000)", 2014 (available here), Section III.H.

85 Joint Understanding Read by President Bush at Annapolis Conference, 27 November 2007 (available here) (***2007 Joint Understanding***). They also "commit[ted] to immediately implement their respective obligations under the performance-based road map" issued by the Quartet in 2003, and "to continue the implementation of the ongoing obligations of the road map until they reach a peace treaty". As discussed at para. 38(c) below, the 2003 Quartet Roadmap was also non-binding, and contained no obligation to engage in permanent status negotiations.

86 See UN, "History of the Question of Palestine" (available here).

87 U.S. Department of State, "Joint Communiqué from the March 19 meeting in Sharm El Sheikh", 19 March 2023 (available here) (***2023 Sharm el-Sheikh Joint Communiqué***). The Joint Communiqué also reaffirmed the previous agreements between the parties (see paras. 3 and 5), none of which imposed an obligation to negotiate that remained extant, as explained above.

88 2023 Sharm el-Sheikh Joint Communiqué, first and second unnumbered paras.

of maintaining the meetings under this format, and are looking forward to cooperating with a view to consolidating the basis for direct negotiations between the Palestinians and the Israelis, towards achieving comprehensive, just and lasting peace".[89]

37. These expressions of political will did not create a legal obligation to negotiate for Israel and Palestine, nor were there any subsequent binding decisions of the UN Security Council in respect of them. The 1999 Sharm el-Sheikh Memorandum and 2023 Sharm El Sheikh Joint Communiqué have not been mentioned in UN Security Council resolutions, and the 2007 Joint Understanding has received only the UN Security Council's declared "support".[90]

38. Moreover, other third-party documents aimed at encouraging negotiations also did not create a legally-binding obligation to negotiate for Israel and Palestine, notwithstanding their having received support from the UN Security Council and General Assembly. The UN Security Council, for example, has urged diplomatic efforts aimed at achieving "a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap and an end to the Israeli occupation that began in 1967".[91] The UN General Assembly has referred to these same documents in calling for the achievement of a "comprehensive, just and lasting peace".[92] As to these documents:

(a) The 1991 "Madrid terms of reference" was an invitation to the Madrid Middle East Peace Conference (held in 1992) sent by the United States and the U.S.S.R.[93] It was evidently not a binding instrument. Moreover, it was only the Governments of Israel, Syria, Lebanon and Jordan that were invited to the Conference. "Palestinians" were invited to attend as part of a "joint Jordanian-Palestinian delegation". Neither the 1991 Madrid terms of reference, nor the

89 2023 Sharm el-Sheikh Joint Communiqué, paras. 5 and 8.

90 UNSC Resolution 1850, UN Doc. S/RES/1850, 16 December 2008, paras. 1-2.

91 S/RES/2334 (2016), para. 9.

92 See, e.g., UNGA Resolution 77/25, UN Doc. A/RES/77/25, 30 November 2022, para. 1.

93 Invitation to Madrid Middle East Peace Conference ('Madrid Principles') – US, USSR Letter, 19 October 1991 (available here) (***1991 Madrid terms of reference***).

general support it received, created a legal obligation to negotiate for Israel and Palestine.

(b) The 2002 "Arab Peace Initiative" was a resolution of the Council of the League of Arab States, adopted in 2002.[94] The resolution, among other things, called on Israel to withdraw fully from the occupied territories and to accept the establishment of "an independent, sovereign Palestinian State", following which the Arab States would enter into a peace agreement with Israel.[95] Israel is not a member of the League of Arab States. The relevant resolution of the Arab League is thus evidently not opposable to Israel.

(c) The 2003 "Quartet Roadmap" was a "road map to a permanent two-State solution to the Israeli-Palestinian conflict" prepared by the United States, the European Union, Russia and the UN, and "presented" to Israel and the Palestinian Authority.[96] It envisaged three phases of action, the third including permanent status agreement negotiations, which there was only to be "[p]rogress into … based on consensus judgment of Quartet".[97] Progress to negotiation of permanent status issues was not automatic. As a third-party document, it was evidently not binding on Israel and Palestine. Nor did the UN Security Council's subsequent "endors[ing]" of it create a legal obligation to negotiate.[98]

39. In summary, Israel and Palestine were only subject to an obligation to negotiate by virtue of Oslo I, but that obligation expired on 4 May 1999 and is thus no longer extant.

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94 League of Arab States, "Arab Peace Initiative", Resolution 14/221, 28 March 2002, contained in Annex II to the Letter dated 24 April 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Lebanon to the United Nations addressed to the Secretary General, UN Doc. A/56/1026–S/2002/932, 15 August 2002 (***2002 Arab Peace Initiative, A/56/1026–S/2002/932***).

95 2002 Arab Peace Initiative, A/56/1026–S/2002/932, paras. 2(a), 2(c) and 3(a).

96 "A performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict", 30 April 2003, annexed to Letter dated 7 May 2003 from the Secretary-General addressed to the President of the Security Council, UN Doc. S/2003/529, 7 May 2003 (***2003 Quartet Roadmap, S/2003/529***).

97 2003 Quartet Roadmap, S/2003/529, p. 7.

98 UNSC Resolution 1515, UN Doc. S/RES/1515, 19 November 2003, para. 1. As noted at footnote 85 above, the parties later "commit[ted]" to implementing the 2003 Quartet Roadmap, in their 2007 Joint Understanding, but this was no more than a non-binding commitment to implement a non-binding roadmap: no obligation to negotiate was created.

2. Even if there were an obligation to negotiate (which there is not), it would be irrelevant to the answers the Court would give to the questions asked of it

40. Even if Israel and Palestine were obliged to negotiate by UN Security Council Resolution 242 or 338 (which they were not), or consented to such an obligation that is still extant in Oslo I or elsewhere (which they did not), it would not affect any existing rights or obligations of the two States. The obligation would be one of conduct, to engage in good faith negotiations, which would not, as the Court has repeatedly recognised, require the parties to reach a result.[99] The existence of such an obligation would not in any way affect, suspend or make conditional Israel's duties immediately to cease its internationally wrongful conduct, to comply with its obligations (including peremptory obligations), and to make reparation for the many prior and continuing breaches of its obligations.[100] Israel would not be able to invoke the existence of any obligation to negotiate as a justification for withholding compliance with these duties pending the outcome of negotiations. This follows from the rules of international law relevant to the negotiations set out in **Chapter 3** below. The existence of any such obligation to negotiate would therefore not affect the legal consequences of Israel's unlawful conduct, and thus would not change the answers the Court would give to the questions asked of it. The existence of any obligation to negotiate is therefore irrelevant to the Court's task.

C. THE IRRELEVANCE OF ANY 'RIGHT TO REMAIN'

41. The second argument put forward in a very small number of Written Statements is that Israel has a 'right to remain' in the Palestinian territory, and to exercise control and authority over that territory and its inhabitants, until a negotiated solution to the entire Israeli-Palestinian conflict is achieved (referred to for convenience here as a '***right to***

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99 *Obligation to Negotiate Access to the Pacific Ocean*, p. 538, paras. 86-87; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010*, p. 68, para. 150.

100 See Written Statement of Belize, 25 July 2023, paras. 75-81 and 103. Some Written Statements seem to suggest that *other UN Member States and even UN organs* have obligations arising out of or in connection with the framework for negotiations (see, e.g., Written Statement of Fiji, July 2023, p. 2; Written Statement of Russia, 25 July 2023, para. 57 and p. 27 (conclusion 15)). This too is irrelevant to the Court's task. Even if there were obligations on other UN Member States and UN organs relating to the framework for negotiations that would not affect the existing rights and obligations of Israel and Palestine, nor would it affect the obligations on all States arising out of Israel's violations of peremptory norms. See Written Statement of Belize, 25 July 2023, paras. 82-89 and 104, and see para. 59 below.

remain'[101]).[102] The suggested consequence of this argument is that the Court cannot declare that Israel is obliged immediately to end its occupation of the Palestinian territory and to cease its exercise of authority and control over that territory. This argument is incorrect and misconceived. It is incorrect because Israel does not have a 'right to remain' in the Palestinian territory pending a negotiated settlement (as explained in **subsection 1**). It is misconceived because, even if Israel did have a 'right to remain' (which it does not), it would not prevail over Israel's duty to comply with peremptory norms, which require its complete and immediate withdrawal from the Palestinian territory (as addressed in **subsection 2**).

1. Israel does not have a 'right to remain' in, or exercise control or authority over, the Palestinian territory until a negotiated solution is achieved

42. No 'right to remain' has been granted to Israel by force of UN Security Council Resolutions 242 (1967) or 338 (1973) (**subsection a**), nor by any Israel-Palestine agreements (**subsection b**).

a. No 'right to remain' by virtue of UN Security Council Resolutions 242 (1967) and 338 (1973)

43. A small number of Written Statements refer to the "principle" of "land for peace",[103] which is said to derive from UN Security Council Resolutions 242 (1967) and 338 (1973),[104] without any real explanation as to what it actually means. Three participants appear to go so far as to suggest that the "principle" of "land for peace" implies that

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101 For the avoidance of doubt, this includes Israel's conduct in respect of Gaza, notwithstanding that Israel maintains no permanent physical presence inside Gaza. On Israel's frequent incursions into Gaza, its control and authority exerted over Gaza, and its *de facto* annexation of Gaza, see Written Statement of Belize, 25 July 2023, paras. 30, 52 and 56(e).

102 Written Statement of Nauru, undated, para. 14 ("Israel and Palestine have … agreed to Israeli presence and responsibilities in the territory pending a negotiated outcome"); Written Statement of Fiji, July 2023, p. 2 ("They specifically agreed that, pending a final agreement … Israel is entitled to maintain a military government and civil administration in the West Bank and Gaza Strip"). See also the references in footnotes 105 and 124 below. Belize responds here only to arguments concerning the legality of Israel's presence in / occupation of the Palestinian territory insofar as they relate to the question of a negotiated settlement. In respect of other arguments regarding the legality of the occupation, Belize refers to its Written Statement.

103 See the Written Statements of Jordan, the United Kingdom, Egypt, Spain, Russia, Italy, the United States of America, China and Cuba.

104 Referring to the "principle" being derived from Resolution 242, see Written Statement of the United Kingdom, 20 July 2023, para. 10; Written Statement of Cuba, 24 July 2023, p. 20; Written Statement of Italy, undated, para. 1; Written Statement of the United States of America, 25 July 2023, para. 1.4. See the terms of UN Security Council Resolution 242 quoted at para. 26 above.

Israel does not have to withdraw from the Palestinian territory — that is, relinquish "land" — until there is a comprehensive "peace".[105] The suggested consequence is that Israel has the right to maintain its occupation until there is a peace agreement.

44. Two preliminary observations are required.

45. First, this understanding of "land for peace" suggests that each side will give something (i.e. Israel will give "land" and the Arab countries will give "peace"). Israel is not, however, sovereign over the Palestinian territory. It cannot give what it does not have (*nemo dat quod non habet*). To suggest otherwise on the basis that Israel would be relinquishing something to which it has a right is truly an astounding position for States to adopt. This is especially so in circumstances where it has been repeatedly declared by the UN — including in a recent mandatory resolution of the UN Security Council that binds all Member States to accept the decisions contained therein — that Israel has no legal right to the Palestinian territory.[106] That determination is based on the fundamental and peremptory prohibition of the acquisition of territory by force.[107] Israel is obliged by international law to withdraw from land which it has no right to possess. In doing so, it would not be relinquishing land or any 'right to remain' in that land.

46. Second, the existence of such an arrangement (if there was one, but there is not) would also have dire consequences for the peace negotiations because it would allow Israel to hold the negotiations hostage and refuse to withdraw until the peace settlement met terms that it dictated. It is difficult to imagine that either the UN Security Council in issuing Resolutions 242 and 338, or Palestine in agreeing to the Oslo Accords which referred to these resolutions, could have intended or agreed to such a situation.

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105 See in particular Written Statement of the United States of America, 25 July 2023, para. 3.20 (contending that a requirement for Israel to "withdraw … *without* the comprehensive, just and lasting peace envisioned as a result of 'land for peace'" would be contrary to the negotiation framework (emphasis in original)). See also, less clearly, Written Statement of Fiji, July 2023, p. 6 (referring to "trading peace" for Israel's withdrawal from occupied territories); Written Statement of the United Kingdom, 20 July 2023, para. 10 ("This is often referred to as the 'land for peace' formula, as it calls for Israeli withdraw *in exchange for* peace and security in the region" (emphasis added)) and para. 71.1 ("a comprehensive peace settlement between the parties is required *in order to* bring the occupation to an end" (emphasis added)).

106 See, e.g., S/RES/2334 (2016), para. 3: "*Underlines* that it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations"; UN Charter, Article 25; *Namibia* Advisory Opinion, p. 52, para. 112, quoted at footnote 67 above.

107 In respect of which, see Written Statement of Belize, 25 July 2023, paras. 44-46.

47. Moreover, the argument is flawed for two further specific reasons.

48. First, Resolution 242 does not embody a "principle" of "land for peace" granting Israel the 'right to remain' until a negotiated solution is achieved. This is clear from the terms of Resolution 242 and the debates relating to its adoption.[108]

(a) It is clear from the terms of Resolution 242 that it does not create any *express* right for Israel to remain in the Palestinian territory. The resolution only speaks of Israel's "withdrawal", stating that a just and lasting peace should include Israel's withdrawal. The resolution nowhere states that Israel is not required to withdraw *until* peace is achieved. Indeed, the underlying reason for the absence of peace is Israel's continued illegal occupation.

(b) It is equally clear that Resolution 242 does not *imply* a 'right to remain'. The resolution states that "a just and lasting peace" "should include the application of both the following principles", which it then lists, one of which is the withdrawal of Israeli forces (the so-called "land" part of the "principle"). Nothing in this text suggests that Israel need not withdraw and is entitled to remain until a just and lasting peace is reached. To the contrary, the text suggests that, for there to be a just and lasting peace, Israel needs to withdraw. If there is a "principle" of "land for peace" to be derived from Resolution 242, that would be its content: Israel must withdraw (handover[109] "land") for there to be peace. That was the interpretation of the concept set out by the Palestinians when they accepted to attend the 1991 Madrid Peace Conference. The letter they sent stated:

> "We further affirm that the principle of territory for peace means Israeli withdrawal from all the occupied territories, including East Jerusalem, a prerequisite for genuine stability and peace in the region. Thus, there can be no real progress on multilateral negotiations dealing with regional issues if the basic cause of the conflict, the Israeli occupation of Arab lands, is not resolved".[110]

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108 On the interpretation of UN Security Council resolutions, see *Namibia* Advisory Opinion, p. 53, para. 114.

109 It is recalled here that Israel would not be handing over anything to which it was entitled, as explained in para. 44 above. What Israel is capable of doing with respect to "land" is simply withdrawing from territory to which it has no right.

110 "The Palestinian Response to the Invitation", in "The Peace Conference: Part I" (1990-1991) 6 *Palestine Yearbook of International Law* 262, p. 280. See also Statement by the President of the Security Council,

When "land for peace" began to be mentioned in UN General Assembly resolutions in 1997,[111] this was also other States' interpretation of the "principle". For example, Jordan referred to:

> "the principle of land for peace, which means the return of the Arab territories occupied since 1967, in order to achieve further progress on all tracks — between Palestine, Syria and Lebanon and Israel — and in order to achieve the comprehensive, just and lasting peace we desire for the region".[112]

This understanding of "land for peace" also underlies the 2002 Arab Peace Initiative[113] and the 2003 Quartet Roadmap.[114] It is relevant that both the UN General Assembly and the UN Security Council have repeatedly encouraged negotiations "based on the relevant United Nations resolutions, the terms of reference of the Madrid Conference, including the principle of land for peace, the Arab Peace Initiative and the Quartet road map"[115] — all of which tends to confirm that Israel's withdrawal from the Palestinian territory is regarded as a

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UN Doc. S/PRST/2002/9, 10 April 2002, supporting the annexed joint statement, which recognised that "the principle of land for peace … formed the basis for the Madrid Conference of 1991". The invitation to the 1991 Madrid Peace Conference, the 1991 Madrid terms of reference (available here and also addressed at para. 38(a) above), proposed the outline of arrangements subsequently discussed at Madrid and ultimately implemented in Oslo I, namely the staged commencement of an interim period, which involved Israeli withdrawals from Palestinian territory, followed by the commencement of negotiations regarding permanent status.

111 See, e.g., UNGA Resolution ES-10/2, UN Doc. A/RES/ES-10/2, 25 April 1997, preambular para. 6; UNGA Resolution ES-10/3, UN Doc. A/RES/ES-10/3, 15 July 1997, para. 11; UNGA Resolution ES-10/4, UN Doc. A/RES/ES-10/4, 13 November 1997, para. 7.

112 See UNGAOR, 10th Emergency Special Session, 5th plenary meeting, UN Doc. A/ES-10/PV.5, 15 July 1997, p. 5. See also, e.g., UNGAOR, 10th Emergency Special Session, 3rd plenary meeting, UN Doc. A/ES-10/PV.3, 25 April 1997, pp. 17 ("The issue of the Middle East should be resolved fairly and comprehensively on the principle of land for peace. The legitimate rights of the Palestinian people, including the right to establish an independent State, should be restored and Israel should withdraw from all occupied Arab territories") (Democratic People's Republic of Korea) and 25 ("Israel must respect the principle of land for peace and withdraw from all occupied Arab territories") (Lebanon); UNGAOR, 10th Emergency Special Session, 7th plenary meeting, UN Doc. A/ES-10/PV.7, 13 November 1997, p. 10 ("Mr. Netanyahu refuses to pick up the negotiations where they were broken off, and to accept the principle of land for peace, which is the very basis of the United States initiative. On the contrary, sometimes he offers peace for peace, sometimes peace for security") (Syrian Arab Republic).

113 It calls upon Israel to, among other things, "withdraw fully" following which "the Arab States shall *then* … enter into a peace agreement between them and Israel" (emphasis added). See 2002 Arab Peace Initiative, A/56/1026–S/2002/932, paras. 2(a), 2(c) and 3(a). See further para. 38(b) above.

114 It provides, among other things, that "Israel withdraws from Palestinian areas occupied" in "Phase I", and that there would be "negotiations aimed at a permanent status agreement" in "Phase III". See 2003 Quartet Roadmap, S/2003/529, pp. 3 and 7. See further para. 38(c) above.

115 See, e.g., UNGA Resolution 67/19, UN Doc. A/RES/67/19, 29 November 2012, para. 5 (and see also preambular para. 9: "*Reaffirming* … all relevant resolutions … which, inter alia, stress the need for the withdrawal of Israel from the Palestinian territory occupied since 1967"); S/RES/2334 (2016), para. 9.

necessary *first* step towards peace. There is thus no foundation for the suggestion that Resolution 242 impliedly conferred a legal right on Israel to remain in the Palestinian territory pending peace; if anything, it supports the opposite.[116]

(c) This plain meaning of the terms of Resolution 242 is supported by the UN Security Council debates relating to its adoption. In particular, there was no unified view among Security Council members that Israel's withdrawal was to be contingent on a "just and lasting peace" being established. The U.S.S.R., for example, stated that "the 'withdrawal of Israel armed forces from territories occupied in the recent conflict' becomes the *first* necessary principle for the establishment of a just and lasting peace in the Near East".[117] Mali expressed the view that Israel's withdrawal "cannot be made subject to any condition whatever".[118] Bulgaria was of the view that Israel's withdrawal should be the first step taken, referring to it as "an important condition for the implementation of the other principles set out in operative paragraphs 1 (ii) and 2 of the resolution".[119]

49. Second, in any event, even if Resolution 242 could be interpreted as granting Israel a 'right to remain' (which it cannot), no such right would be opposable to Palestine because it is not a UN Member State and only Member States are bound by mandatory decisions of the Security Council. It follows that any 'right to remain' would only be opposable to Palestine if incorporated in agreements between Israel and Palestine. Security Council Resolution 242 is referred to in Oslo I and II, but, through those

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116 The League of Arab States also disputes that Resolution 242 created a 'right to remain' for Israel, and does so on a purely textual basis. It rightly observes that (*i*) the plain language of Resolution 242 simply recognises that *both* "land" and "peace" are required for "a just and lasting peace" to be achieved, and (*ii*) that it does not follow that, if one is absent, there is a legal right for the other to be withheld, i.e., the resolution did not create a right to land in the absence of peace. See Written Statement of the League of Arab States, 20 July 2023, paras. 64-65.

117 UNSCOR, 1382nd meeting, UN Doc. S/PV.1382, 22 November 1967, para. 119 (emphasis added). The U.S.S.R. also stated that the language in Resolution 242 relating to "the right of all States in the Near East 'to live in peace within secure and recognized boundaries' cannot serve as a pretext for the maintenance of Israel forces on any part of the Arab territories seized by them as a result of war".

118 UNSCOR, 1382nd meeting, UN Doc. S/PV.1382, 22 November 1967, para. 189, and see also para. 195.

119 UNSCOR, 1382nd meeting, UN Doc. S/PV.1382, 22 November 1967, para. 141. The same position was also taken by Jordan and the United Arab Republic, which participated in the discussion at the meeting: UNSCOR, 1382nd meeting, UN Doc. S/PV.1382, 22 November 1967, para. 148 (United Arab Republic), and para. 153 (Jordan).

references, Israel has not been granted a 'right to remain' in the Palestinian territory until a negotiated solution is achieved.

(a) Oslo I makes two references to Resolution 242, both of which appear in the Article setting out the "aim of the negotiations". The Article first refers to the five-year interim period "leading to a *permanent settlement based on* Security Council resolutions 242 (1967) and 338 (1973)".[120] The Article then states the parties' understanding that the "negotiations on the permanent status will *lead to the implementation of* Security Council resolutions 242 (1967) and 338 (1973)".[121] Oslo II simply repeats these two statements from Oslo I.[122]

(b) Both statements draw on Security Council Resolution 242 as being relevant for informing the *ultimate outcome* of the permanent status negotiations. That is, these statements are concerned with the content of what will be agreed in the "permanent settlement" being consistent with what is said in Resolution 242. That resolution is *not* drawn on as having any relevance for Israel and Palestine's rights in the intervening period. The references to Resolution 242 do not adopt or incorporate any purported right of Israel to remain in the Palestinian territory pending the "permanent settlement".[123]

b. No 'right to remain' by virtue of Israel-Palestine agreements

50. Two States have argued that, independently of the references to Security Council Resolutions 242 and 338, the Oslo Accords grant Israel the 'right to remain' in the Palestinian territory until a negotiated solution is achieved. Nauru, for instance, asserts that Israel and Palestine have "agreed to Israeli presence and responsibilities in the territory pending a negotiated outcome" and that "Israel has the recognised right to

120 Oslo I, Article I (emphasis added).

121 Emphasis added.

122 Oslo II, preambular paras. 5-6.

123 *Cf.* Written Statement of Nauru, undated, para. 12, asserting in passing that the references to Resolutions 242 and 338 "incorporated" those resolutions into the Oslo Accords.

maintain its presence in the territory, *inter alia*, in order to meet its security obligations", citing to Oslo II.[124]

51. The contention appears to be that, by virtue of the Oslo Accords, Palestine has consented to or granted a right to Israel to remain in the Palestinian territory until a negotiated solution is reached, and thus any declaration by the Court that Israel is obliged immediately to cease its occupation would conflict with or circumvent that right.[125]

52. This argument is fundamentally flawed for four reasons.

53. First, the Oslo Accords[126] grant no right to Israel to remain. They say *nothing* about the legality or otherwise of Israel's presence in the Palestinian territory, nor do they grant Israel a new 'right to remain' pending a negotiated solution. They simply proceed from the *fact* that Israel is present in and in control of the Palestinian territory.

54. Second, in respect of the provisions of the Oslo Accords that contemplate or make provision for Israel being present in certain parts of the Palestinian territory and to exercise certain powers and jurisdiction, they cannot be said to constitute Palestine's consent to that presence or exercise of powers and jurisdiction. Palestine is under occupation. Israel is the occupying Power. Occupying Powers exercise authority over occupied territories.[127] The Oslo Accords were concerned with transferring some of the

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124 Written Statement of Nauru, undated, paras. 9 and 14. Fiji contends that "Israel's presence in the West Bank is endorsed by detailed international legal agreements" and that "[a]ccording to the Oslo Accords, the final status of the territories is subject to negotiations" — as if to suggest that, until such negotiations are concluded, Israel's presence in Palestine is endorsed by the Oslo Accords. See Written Statement of Fiji, July 2023, p. 5. In referring to "detailed international legal agreements" that purportedly endorse Israel's presence in the Palestinian territory, Fiji also mentions the 1994 Israel-Jordan peace agreement, but that document obviously cannot create a right for Israel to remain in Palestinian territory given that Palestine was not a party to that treaty and Jordan was not competent to grant such a right. Moreover, the terms of that document do not endorse the presence of Israel in the West Bank. See Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, 26 October 1994, 2042 UNTS 351.

125 See also Written Statement of the United Kingdom, 20 July 2023, paras. 70 and 72, contending that the advisory opinion would "conflict with" the "agreed negotiation framework" which "aims to bring about the termination of the Israeli occupation that the Request seeks", implying that Israel does not have to withdraw until there is a negotiated settlement as envisaged by the negotiation framework.

126 To the extent Oslo II remains in force: see Statement by Mr. Mahmoud Abbas, President of the State of Palestine to the General Assembly, UNGAOR, 70th Session, 19th plenary meeting, 30 September 2015, UN Doc. A/70/PV.19, p. 30.

127 Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 (***Hague Regulations***), Article 42: "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such

authority exercised by Israel to Palestine. This is clear from Article VI of Oslo I, titled "Preparatory Transfer of Powers and Responsibilities", and is confirmed explicitly in the language of the very first provision of Oslo II, Article I(1), which states:

> "Israel shall *transfer* powers and responsibilities as specified in this Agreement from the Israeli military government and its Civil Administration to the [Palestinian] Council in accordance with this Agreement. Israel shall *continue* to exercise powers and responsibilities not so transferred."[128]

55. A large part of the authority being exercised by Israel was not transferred to the Palestinian Authority. As occupying Power, Israel simply continued to exercise that authority. The legality of that continuing exercise of authority is determined by the *jus ad bellum*;[129] it is not granted anew by the Oslo Accords. It is utterly absurd to say that Palestine consented to the occupying Power exercising the authority that the latter retained.[130]

56. Third, no such 'right to remain' is granted to Israel by virtue of Article XXXI(7) of Oslo II. Nauru points to Article XXXI(7), according to which "[n]either side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations."[131] In relying on this Article to contend that the parties have "agreed to Israeli presence and responsibilities in the territory pending a negotiated outcome",[132] Nauru suggests that the "status" which must not be unilaterally changed pending a negotiated solution, is Israel's factual presence in and exercise of authority over the Palestinian territory, which thereby implies a right for Israel to remain. There is no support for that interpretation of the term "status" in the terms of Article XXXI(7). Moreover, that interpretation would ascribe to Article XXXI(7) the function of turning a factual state of affairs into a legal right for Israel, and in doing so waive Palestine's right that Israel immediately end its illegal

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authority has been established and can be exercised." See also Written Statement of Belize, 25 July 2023, para. 29.

128 Emphasis added. See also, e.g., Article XI titled "Land" and providing for certain areas of Palestinian territory to "come under the jurisdiction of the Palestinian Council in a phased manner" and stating that certain powers and responsibilities "will be transferred" to the Palestinian Council.

129 See Written Statement of Belize, 25 July 2023, paras. 31-34.

130 *Cf.* Written Statement of Nauru, undated, paras. 9 and 12, citing to Oslo I, Article VIII and Oslo II, Articles X(4), XII and XIII(2)(a).

131 Written Statement of Nauru, undated, para. 13.

132 Written Statement of Nauru, undated, para. 14.

occupation.[133] However, Article XXXI(6) of Oslo II declares: "Neither Party shall be deemed, by virtue of having entered into this Agreement, to have renounced or waived any of its existing rights, claims or positions." Article XXXI(7) therefore cannot be interpreted as implying that Palestine has waived its right that Israel end its illegal occupation.

57. Fourth, to the extent that any rights were conferred on Israel under the Oslo Accords, those rights were limited in time. They were rights for "a transitional period not exceeding five years",[134] as explained in paragraph 33(d)(v) above.

2. Even if there were a 'right to remain' (which there is not), it would be irrelevant to the answers the Court would give to the questions asked of it

58. Even if the negotiation framework did somehow grant Israel a 'right to remain' in the Palestinian territory pending a negotiated solution (which it did not), it would not matter because it would not affect the legal consequences of Israel's unlawful conduct, or, therefore, the answers the Court would give to the questions asked of it. This follows from the relevant rules of international law relevant to negotiations set out in **Chapter 3** below.

59. Peremptory norms require Israel's complete and immediate withdrawal from the Palestinian territory. Nothing supervenes that. As explained in **Chapter 3** below, peremptory norms are non-derogable and can only be modified or displaced by subsequent norms of the same character. Any 'right to remain' created through the "land for peace" "principle"[135] or Oslo II[136] would not have that status.

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133 In respect of which, see Written Statement of Belize, 25 July 2023, paras. 76, 78 and 103.

134 Oslo I, Article I; Oslo II, preambular para. 5.

135 The legal force of any such 'right to remain' would derive from the UN Charter and the duty of all Member States under Article 25 of the Charter to accept binding decisions of the Security Council. Peremptory norms cannot be modified or displaced by a treaty provision, including Article 25 of the UN Charter. This is so notwithstanding Article 103 of the UN Charter. See ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) with commentaries, ILC Yearbook 2022, vol. II, Part Two, Annex (***ILC, Draft conclusions on peremptory norms***), conclusion 16, commentary para. 4; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, Separate Opinion of Judge *ad hoc* Lauterpacht, p. 440, para. 100.

136 Even if a temporary 'right to remain' pending a negotiated settlement were consented to by Israel and Palestine through Oslo II (which it was not), and even if that constituted valid consent by Palestine (as to

60. It follows that the existence of any postulated 'right to remain' does not affect the legal consequences of Israel's unlawful conduct. The framework for negotiations is, accordingly, legally irrelevant to the Court's task.

which, see para. 69 below) rendering Israel's presence not unlawful under *jus ad bellum*, it would not have any impact on Israel's obligation to withdraw immediately from the Palestinian territory. That is because compliance with other peremptory norms — namely, the right to self-determination and the prohibition of the acquisition of territory by force — would still oblige Israel to withdraw completely and immediately from the entirety of the Palestinian territory. See Written Statement of Belize, 25 July 2023, paras. 75, 76 and 78. Those obligations are unaffected by any consent expressed in Oslo II because: (*i*) any such consent to Israel's limited presence during the five-year transitional period was manifestly not consent to annexation of the Palestinian territory (i.e. it was evidently not a treaty of cession) (see, on the scope of consent, para. 69(b) below); and (*ii*) it is not possible to validly consent to the violation of the right to self-determination, such as those being committed by Israel today (see para. 66 and footnote 145 below).

CHAPTER 3. THE INTERNATIONAL LEGAL RULES RELEVANT TO NEGOTIATIONS

61. Regardless of whether the framework for negotiations gives rise to any rights and obligations, or whether it is merely a non-binding political framework for negotiations, any negotiations that are to take place must be consistent with international law. This includes the rules of customary international law relevant to negotiations. This was recognised by the Court in the *Wall* Advisory Opinion, when it stressed the need for negotiations "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".[137] In encouraging negotiations, the Court was not giving free rein to the parties in respect of those outstanding issues, contrary to the suggestion of a number of Written Statements. [138] Rather, it was recognising the importance of negotiations and emphasising that any solution reached through them must be based on and consistent with international law.

62. This Section examines the international law principles relevant to the *subject-matter and outcome* of negotiations. It is not concerned with the well-established international law principles concerning the *conduct* of negotiations.[139] Following this introduction, **Section A** sets out the key international law principles that are relevant. **Section B** applies those principles in the context of the present Advisory Opinion proceedings to demonstrate that Israel's duties to comply with its international law obligations are not conditioned by the framework for a negotiated solution.

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137 *Wall* Advisory Opinion, p. 201, para. 162 (emphasis added).

138 See, e.g., Written Statement of Canada, 14 July 2023, para. 20; Written Statement of the United States of America, 25 July 2023, paras. 3.6-3.7 and 3.16-3.17; Written Statement of the United Kingdom, 20 July 2023, para. 60.3.3, all characterising the Court's approach in the *Wall* Advisory Opinion as addressing a narrow question while leaving the broader situation to the parties to negotiate, impliedly free from pronouncements by the Court as to the obligations of Israel in respect of the subject-matter and outcome of the negotiations.

139 As to which see, e.g., *Obligation to Negotiate Access to the Pacific Ocean*, p. 538, paras. 86-87.

A. INTERNATIONAL LEGAL RULES RELEVANT TO THE SUBJECT-MATTER AND OUTCOME OF ANY NEGOTIATIONS

1. States are under a continuing duty to comply with their international obligations and are obliged immediately to cease any continuing wrongful act

63. States are under a duty to comply in good faith with their obligations.[140] This duty of compliance extends to both primary and secondary obligations.[141] States are also obliged immediately to cease any continuing wrongful act.[142]

2. The duty to comply with peremptory norms is non-negotiable

64. Peremptory norms are, by definition, non-derogable. They are customary international law obligations that are recognised and accepted by the international community as a whole as norms from which *no derogation* is permitted, and which can *only* be modified by a subsequent norm of international law having the same character.[143] Non-derogability means subject to no exception, condition or justification whatsoever. The duty to comply with peremptory norms is therefore absolute.

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140 UNGA Resolution 2625 (XXV), UN Doc. A/RES/2625(XXV), 24 October 1970, Annex: "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations", sixth principle, second para., sub-para. (f) ("Each State has the duty to comply fully and in good faith with its international obligations"); Vienna Convention on the Law of Treaties, 23 May 1969, entered into force 27 January 1980, 1155 UNTS 331 (***VCLT***), Article 26; ILC, Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, ILC Yearbook 2001, vol. II, Part Two (***ILC, Articles on State Responsibility***), Article 29 and commentary thereto.

141 See ILC, Articles on State Responsibility, Article 33, commentary para. 4, referring to Part Two as dealing with "secondary *obligations* of States in relation to cessation and reparation" (emphasis added).

142 ILC, Articles on State Responsibility, Article 30. See also, e.g., *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986,* p. 149, dispositif para. 12 ("*Decides* that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations"); *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2022*, p. 340, para. 195 ("Colombia must therefore immediately cease its wrongful conduct").

143 See generally, ILC, Draft conclusions on peremptory norms, conclusion 3. See also *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012*, p. 141, para. 95 ("A *jus cogens* rule is one from which no derogation is permitted").

65. A treaty which, at the time of its conclusion, conflicts with a peremptory norm is automatically and from the outset void.[144]

66. It follows from the absolute nature of the duty of compliance, and the inability to assume an obligation that conflicts with a peremptory norm, that compliance with peremptory norms is non-negotiable. States may not, as between themselves, consent to modify the content of, or duty to comply with, peremptory norms.[145]

3. The duty to comply with non-peremptory obligations stands until there has been consensual *inter-se* modification of those obligations

67. In respect of obligations that are not peremptory in nature,[146] States are free, as between themselves and on the basis of consent, to modify the existence and/or content of such obligations. This is generally so whether the obligation being modified is sourced in treaty or custom.[147]

68. However, until such time as the relevant States have actually consented to any modification of their non-peremptory obligations, the general duty to comply in good faith with those obligations (and the correlative duty immediately to cease any continuing breach of those obligations) remains in full force.[148] The existence of any negotiations and the possibility of any agreement being reached on the removal or modification of a non-peremptory obligation does not operate to suspend, remove or condition its binding force.

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144 VCLT, Article 53; ILC, Draft conclusions on peremptory norms, conclusion 11(1). See also conclusion 14(1) as regards customary obligations and conclusion 15(1) as regards unilateral acts.

145 ILC, Articles on State Responsibility, commentary to Article 26, para. 6, and commentary to Article 20, para. 7.

146 See para. 74 below.

147 See *North Sea Continental Shelf*, *Judgment*, *I.C.J. Reports 1969*, p. 42 ("it is well understood that, in practice, rules of international law can, by agreement, be derogated from in particular cases, or as between particular parties"). There may be some exceptions that it is not necessary to address here (e.g. *inter se* modifications of obligations established for the protection of a collective interest or which affect the rights or performance of obligations owed to other States, or *inter se* modifications of treaty provisions that are contrary to the object and purpose of the treaty).

148 See also Imseis, "Negotiating the Illegal" (2020) 31(3) *EJIL* 1055, p. 1068.

69. In considering the freedom of States to consent to the modification *inter se* of their obligations and whether States have validly done so, rules of international law relating to consent are relevant, including:

(a) Consent is only effective if it is validly given.[149] Valid consent is freely given, clearly established and not vitiated by coercion or some other factor.[150] In circumstances where one consenting party is occupied by the other, particular consideration should be given to whether consent of the occupied State is freely given, as well as to international humanitarian law rules concerning limits on agreements between occupied and occupying States.[151]

(b) Consent operates prospectively and is limited in scope to that which is actually consented to.[152] Under the law of State responsibility, consent operates as a justification and thereby precludes the existence of a breach of international law following the point in time at which consent is given. It does not retroactively render prior breaches lawful or preclude the existence of the responsibility of the State in respect of such breaches, in particular the duty to make reparations.

B. ISRAEL'S DUTY TO COMPLY WITH ITS INTERNATIONAL LAW OBLIGATIONS IS NOT CONDITIONED BY THE EXISTENCE OF THE FRAMEWORK FOR NEGOTIATIONS

70. Applying the three principles identified in **Section A** immediately above to the facts relevant to the request for an Advisory Opinion, it is clear that the framework for negotiations does not condition Israel's ongoing duty to comply with all of its legal obligations, both peremptory and non-peremptory.

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149 ILC, Articles on State Responsibility, commentary to Article 20, para. 4.

150 ILC, Articles on State Responsibility, commentary to Article 20, para. 6; VCLT, Articles 51-52, and see also Articles 46-50 concerning certain grounds that may be invoked for invalidating consent to a treaty (lack of competence, lack of authority, error, fraud and corruption).

151 See, e.g., GC IV, Article 7 ("No special agreement shall adversely affect the situation of protected persons … nor restrict the rights which it confers upon them"), Article 8 ("Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention") and Article 47 ("Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention … by any agreement concluded between the authorities of the occupied territories and the Occupying Power").

152 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, pp. 198-199, para. 52; ILC, Articles on State Responsibility, commentary to Article 20, para. 3; ILC Yearbook 1979, vol. II, Part Two, p. 113, commentary to draft Article 29, paras. 16-17.

71. As to obligations of a peremptory character, as explained in detail in Belize's Written Statement, Israel is in continuing breach of its obligations to comply with *jus cogens* norms, including:[153]

(a) the obligation to respect the right of the Palestinian people to full external self-determination;

(b) the prohibitions of the use of force, aggression and non-acquisition of territory by force, which Israel has breached in relation to its unlawful occupation and annexation of East Jerusalem, the remainder of the West Bank and Gaza;

(c) basic rules of international humanitarian law; and

(d) the prohibition of racial discrimination and apartheid.[154]

72. Israel has an absolute and unconditional obligation to comply with these peremptory norms, and to cease its continuing breaches of them. The question of *whether* or *to what extent* Israel is going to comply with these norms cannot, consistently with international law, be negotiated between Israel and Palestine because the parties are unable to conclude a valid agreement that would remove or modify the content of these obligations. Any agreement that were concluded would be automatically void.[155]

73. The full details of what Israel is obliged to do in order to cease breaching, and to comply with, these peremptory norms are set out in Belize's Written Statement.[156] It is relevant to note here that they require Israel immediately to end its occupation of all of the Palestinian territory (including all of the settlements), and to dismantle, remove or render ineffective all acts, policies and practices that prevent the Palestinian people from exercising their right to self-determination, that constitute apartheid, or that constitute violations of international humanitarian law. *Whether* Israel is going to

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153 See the references in footnote 44 above.

154 Belize also notes the evidence that suggests Israel may be inciting genocide, and may commit genocide in Gaza: see para. 13 above. The prohibition of genocide is, of course, peremptory: *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility*, *Judgment, I.C.J. Reports 2006*, pp. 31-32, para. 64; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015*, p. 47, para. 87.

155 VCLT, Article 53; ILC, Draft conclusions on peremptory norms, conclusion 11(1).

156 Written Statement of Belize, 25 July 2023, paras. 76-79 and 103.

comply with these peremptory obligations is a question which is unable to be subjected to any conditions or negotiations; they are non-negotiable.[157] The obligations of Israel and the rights of the Palestinian people in respect of these peremptory norms are, accordingly, unchanged by the existence of a framework for negotiations.

74. As to obligations of a non-peremptory character, including certain of Israel's obligations under relevant human rights treaties, it is plain that there has been no agreement through which Israel and Palestine have consented to modify the existence or content of particular obligations between themselves. Until such time, the rights and obligations of both parties remain unchanged by the mere fact of the existence of a framework for negotiations. In particular, until there is a negotiated agreement that may specify otherwise, Israel's obligations to comply with its non-peremptory obligations continue in full force. Similarly, the rights of the Palestinian people remain unchanged. This includes the entire range of rights of the Palestinian people under international human rights law, including the right to struggle against foreign domination and occupation.[158] Even if an agreement to modify non-peremptory obligations were to be concluded in the future, Palestine's consent to that situation — freely given, clearly established and not vitiated by coercion or some other factor — would only operate prospectively. It would not negate the existence of Israel's prior breaches of the relevant obligations, nor its duty to make reparation for the injury caused by them.[159] It follows that the existence of the framework for negotiations does not, in any way, condition or

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157 That is not to say that negotiations cannot be undertaken that do not conflict with these peremptory norms, e.g. negotiations on an agreement for managing the practicalities of Israel's compliance with these peremptory obligations could occur.

158 See Written Statement of the League of Arab States, 25 July 2023, paras. 114-117 and the material cited therein. See further the recognition of this right in UNGA Resolution 3314 (XXIX), UN Doc. A/RES/3314(XXIX), 14 December 1974, Annex, Article 7; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), 8 June 1977, entered into force 7 December 1978, 1125 UNTS 3, Article 1(4); and UNGA Resolution 38/36, UN Doc. A/RES/38/36, 1 December 1983, para. 4 (affirming "the legitimacy of [the Namibian people's] struggle by all the means at their disposal, including armed struggle, against the illegal occupation of their territory by South Africa").

159 The same is also true in situations where the absence of consent is a necessary condition for the breach of a peremptory norm. The peremptory prohibition on the unlawful use of force, for example, requires the absence of consent of the territorial sovereign. If such consent is given, then there is no unlawful use of force from the moment in time when consent is given. If, for example, Israeli withdrew from the Palestinian territory completely but Palestine consented to Israeli troops carrying out border patrols within its territory along its border, then such patrols would not constitute an unlawful use of force in violation of a peremptory norm. That specific and prospective consent of Palestine, however, does not alter the fact that Israel was in violation of the peremptory prohibition on the use of force in respect of its occupation of the Palestinian territory as a whole in the past.

relieve Israel from its duty immediately to cease continuing breaches and to comply with its obligations of a non-peremptory character.

75. Accordingly, Israel is obliged immediately to comply with both its peremptory and non-peremptory obligations. The existence of a framework for negotiations changes nothing of relevance to the Court and does not in any way condition Israel's obligations of cessation and compliance.

76. The UN and its Member States recognise that Israel's duty to comply with its legal obligations is not conditioned by the framework for negotiations. This is clear from resolutions and statements that support *both* a negotiated two-State solution while at the same time firmly declaring that measures breaching international law must unconditionally and immediately cease.[160]

77. That Israel's compliance with its obligations is not conditioned by the framework for negotiations is also confirmed by the fact that the UN has never suggested that the cessation of Israel's numerous violations of international law in the Palestinian territory be conditioned on negotiation.[161]

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160 See, e.g., Written Statement of Turkey, undated, p. 13 (stating that measures constituting a "breach of international law must be unconditionally and immediately rescinded" but reiterating "its firm support [for] a negotiated two-state solution"); Written Statement of Norway, 7 July 2023, p. 2 ("a lasting, peaceful solution to the Israeli-Palestinian conflict must be found through political negotiations and must be in conformity with the framework of international law"). See also S/RES/2334 (2016), paras. 1-3 and 8-9 (reaffirming that Israel's settlement activities in the Palestinian territory constitute flagrant violations of international law that must "immediately and completely cease" while urging diplomatic efforts aimed at achieving a "comprehensive, just and lasting peace … on the basis of … an end to the Israeli occupation that began in 1967").

161 As also recognised in Imseis, "Negotiating the Illegal" (2020) 31(3) *EJIL* 1055, p. 1069.

CONCLUSION

78. The Court need not concern itself with the framework for negotiations because it is not relevant to the UN General Assembly's request for an Advisory Opinion. It is not a compelling reason for the Court to decline to answer, or to answer fully, the questions asked of it. Nor does it affect the legal consequences of Israel's unlawful conduct which Court has been asked to address.

79. Belize reiterates its grave concern about the impact on the Palestinian people of Israel's long-standing illegal conduct, and Belize's firm belief in the value of the Advisory Opinion as a catalyst for determined efforts to bring such conduct to a permanent end. Belize supports negotiations between Israel and Palestine, but they must be based on, and respect, fundamental rules of international law. By answering the questions fully in accordance with international law, the Advisory Opinion will provide practical and meaningful assistance to the UN General Assembly in its efforts to facilitate a solution to the Israel-Palestine situation that ensures the right of the Palestinian people to full independence, freedom and territorial integrity in the exercise of their inalienable right to self-determination.

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25 October 2023