

INTERNATIONAL COURT OF JUSTICE

**REQUEST FOR AN ADVISORY OPINION BY THE UNITED NATIONS
GENERAL ASSEMBLY IN RESOLUTION 77/247 OF 30 DECEMBER 2022
PERTAINING TO THE QUESTION OF PALESTINE**

WRITTEN COMMENTS OF THE STATE OF PALESTINE



25 October 2023

TABLE OF CONTENTS

INTRODUCTION	1
Recent Events: A Rapidly Deteriorating Situation	4
The Structure of these Written Comments	12
CHAPTER 1.	
JURISDICTION AND ADMISSIBILITY	15
I. The Legal Character of the Questions	15
II. The Questions Concern Issues of Interest for the General Assembly and the International Community as a Whole	18
III. Contributing to a Peaceful Settlement Based on Respect for International Law	23
IV. There Are Sufficient Factual Elements at the Court’s Disposal	32
V. The General Assembly’s Questions Are Capable of Being Answered as Presently Worded.....	36
CHAPTER 2.	
THE PERMANENCE OF ISRAEL’S OCCUPATION OF THE OPT RENDERS IT ILLEGAL UNDER INTERNATIONAL LAW	39
I. The Illegality of Israel’s Permanent Occupation	40
II. Israel’s Illegal Acquisition of Palestinian Territory by Use or Threat of Force	52
III. Israel’s Illegal Settlement of East Jerusalem and the Rest of the West Bank to Advance Its Annexationist Objectives.....	56
IV. Israel’s Illegal Changes to the Status, Character and Demography of the Holy City of Jerusalem	60
V. Israel’s Occupation, Annexation and Settlement of the OPT, and Changes to the Status, Character and Demography of Jerusalem, Cannot Be Justified as Lawful “Self-Defence”	63
VI. The Legal Consequences of Israel’s Illegal Annexation and Occupation of the OPT, including East Jerusalem	72
A. Legal Consequences for Israel.....	72

1. Israel Must Cease its Wrongful Conduct relating to the Occupation and Annexation of the OPT and Provide Assurances and Guarantees of Non-Repetition.	73
(a) The Obligation to Cease its Wrongful Conduct.....	73
(b) Assurances and Guarantees of Non-Repetition	78
2. Israel is under an Obligation to Make Full Reparation.....	80
(a) Restitution	80
(b) Compensation	83
(c) Satisfaction.....	84
B. Legal Consequences for all Other States	85
1. The Obligation of Non-Recognition	86
2. The Obligation not to Contribute to Israel’s Illegal Occupation	88
3. The Obligation to Cooperate to End Israel’s Illegal Occupation.....	89
C. Legal Consequences for the United Nations.....	90

CHAPTER 3.

ISRAEL’S DENIAL OF THE PALESTINIAN PEOPLE’S RIGHT TO SELF-DETERMINATION	93
I. Israel’s Denial of the Palestinian People’s Right of Self-Determination Renders Its Occupation of the OPT Illegal.....	94
II. The Israeli Occupation Denies the Palestinian People their Right to Territorial Integrity and Fragments the Population into Separate Enclaves	102
III. Israel’s Appropriation of the Natural Resources of the OPT Violates the Right of the Palestinian People to Self-Determination.....	108
IV. The Legal Consequences of Israel’s Denial of the Palestinian People’s Right of Self-Determination	113
A. Legal Consequences for Israel.....	113
1. The Obligation to Cease Its Denial of the Palestinian People’s Right to Self-Determination	113
(a) The Obligation to Cease Its Wrongful Conduct	113
(b) Assurances and Guarantees of Non-Repetition	116

2. The Obligation to Make Reparation for the Damage Caused by Israel's Denial of the Palestinian People's Right to Self-Determination	117
(a) Restitution	117
(b) Compensation	118
(c) Satisfaction.....	119
B. Legal Consequences for All Other States	120
1. The Obligation of Non-Recognition	120
2. The Obligation Not to Contribute to the Denial of the Palestinian People's Right to Self-Determination.....	121
3. The Obligation to Cooperate to End the Denial of the Palestinian People's Right to Self-determination.....	124
C. Legal Consequences for the United Nations.....	126
CHAPTER 4.	
ISRAEL'S BREACHES OF THE <i>JUS COGENS</i> PROHIBITIONS OF GROSS VIOLATIONS OF HUMAN AND HUMANITARIAN RIGHTS, RACIAL DISCRIMINATION AND APARTHEID.....	129
I. Gross Violations of Fundamental Rules of International Humanitarian and Human Rights Law	129
A. The Discriminatory Dual Legal System	130
B. Arbitrary Arrest and Detention of Palestinians and Use of Torture and Other Cruel, Degrading and Inhuman Treatment Against Palestinian Detainees.....	132
C. Israel's Unlawful Use of Force Against Palestinians	135
D. Denial of Freedom of Movement	139
E. Freedom of Religion	142
F. Discriminatory Land and Planning Regime in the OPT	144
G. Restrictions on Access to and Use of Natural Resources in the OPT....	147
H. Violations of Political, Civil, Economic, Social and Cultural Rights....	149
I. Collective Punishment	153
II. Persecution and Discrimination Against Palestinians	156
III. Racial Discrimination Constituting Apartheid	163

A. Widespread Recognition of the <i>Jus Cogens</i> Prohibition on Apartheid .	164
B. Widespread Recognition That Israel Is Committing Apartheid	165
IV. Legal Consequences of Israel’s Violations of Human Rights and International Humanitarian Law That Constitute Grave Breaches, Persecution, Racial Discrimination and Apartheid.....	176
A. Legal Consequences for Israel.....	176
1. Israel Must Cease Its Violations of International Humanitarian Law and International Human Rights Law and Provide Assurances and Guarantees of Non-Repetition	177
(a) The Obligation to Cease Wrongful Conduct	177
(b) Assurances and Guarantees of Non-Repetition	178
2. Reparation.....	179
(a) Restitution	179
(b) Compensation	181
(c) Satisfaction.....	183
B. Legal Consequences for All Other States	184
1. The Obligation of Non-Recognition	184
2. The Obligation Not to Contribute to the Israeli Policy of Violating the Rights of the Palestinian People	185
3. The Obligation to Cooperate to End Israel’s Policy of Disregard for Palestinian Human Rights and Humanitarian Law.....	187
C. Legal Consequences for the United Nations.....	191
SUBMISSIONS	193

TABLE OF FIGURES

Figure 1 Benjamin Netanyahu addresses the general debate of the 78th Session
of the United Nations General Assembly28

WRITTEN COMMENTS OF THE STATE OF PALESTINE

INTRODUCTION

1. On 3 February 2023, the Court fixed 25 July 2023 as the deadline for States and international organizations to file Written Statements on the questions addressed to the Court by General Assembly resolution 77/247 (“the Request”) and fixed 25 October 2023 as the deadline for States and international organisations to submit Written Comments on the Written Statements made by other States or organisations (“the Order”).

2. Pursuant to the Order, on 24 July 2023 the State of Palestine submitted its Written Statement. In that submission, Palestine provided: an exposition of Israel’s longstanding and ongoing serious violations of its obligations under international law, including of peremptory norms of international law in relation to the right to self-determination, the prohibition of the acquisition of territory by force, gross violations of human rights and humanitarian law, including notably the prohibition on racial discrimination and apartheid – all drawn from United Nations resolutions, the authoritative reports and findings of United Nations bodies and agencies, Israeli legislation and public statements by Israeli officials, and an analysis of the legal consequences of those violations. Palestine explained, amongst other things, why the inescapable consequence of the violations of international law which Israel has committed and continues to commit in the course of its occupation – is that the occupation is illegal and must be brought to an immediate, total and unconditional end. Palestine also spelled out the other legal consequences for Israel, for other States and for the United Nations.

3. In addition to the State of Palestine, a total of 53 other States and three international organizations submitted Written Statements to the Court in accordance with its Order. The number of States and organizations which have filed Written Statements is unprecedented¹. These submissions emanate from all corners of the globe, reflecting the importance and gravity of the issues raised by the legal

¹ In *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 (hereafter: the “Wall Opinion”) a total of 49 States and organizations filed Written Statements. In *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95 (hereinafter “the Chagos Opinion”) a total of 32 States filed Written Statements.

questions contained in the Request, and the overwhelming interest and need of the international community to obtain authoritative answers to those questions from the principal judicial organ of the United Nations.

4. There is no doubt that the Court has jurisdiction to deliver the Advisory Opinion sought by the Request under Article 65 of its Statute. No State or organization contests the existence of that jurisdiction. There is also overwhelming support for the contention that the Court should exercise its jurisdiction and issue the Advisory Opinion that has been requested. Some 34 States and international organizations have expressly explained why it should do so and have shown that there are no compelling reasons for it to demur. Ten others implicitly support the exercise of the Court's jurisdiction by addressing themselves to how the Court should answer the General Assembly's questions, assuming that it will do so.

5. A small minority of the Written Statements contend that there are compelling reasons for the Court to decline to exercise its jurisdiction – something this Court has never done in response to any previous request for an Advisory Opinion by the General Assembly. The arguments advanced in support of the Court taking that exceptional course are without merit, as will be shown in Chapter 1 below. In the State of Palestine's view, which is supported by most of the other submissions, acceptance of those arguments would amount to an abdication by the Court of its responsibility for answering legal questions of profound importance to the United Nations and the international community at large. It would deny the General Assembly the Court's guidance on the interpretation and application of international law that it considers necessary to its work on the question of Palestine – a matter of longstanding importance to it, and for which it has recognized it holds permanent responsibility until the question is resolved in all its aspects in accordance with international law. The State of Palestine has full confidence that the Court, pursuant to its role as the guardian of the international legal order, will faithfully carry out the function which it has been requested by the General Assembly to perform as part of its responsibility as a major organ of the United Nations.

6. The overwhelming majority of the Written Statements provide strong and extensive support for all of the core propositions and conclusions set out in Palestine's Written Statement. For example:

- (a) No fewer than 32 States and international organizations have submitted that Israel's prolonged occupation of the Occupied Palestinian Territory, including East Jerusalem (hereafter "OPT") is illegal because it is intended to become

permanent. In contrast, only three States (one of which is Israel itself) contend that the Court should not declare the occupation illegal.

- (b) No fewer than 27 States and international organizations conclude that Israel has annexed Palestinian territory in violation of the *jus cogens* norm of international law that prohibits the acquisition of territory by the use or threat of force. Only one State positively contends otherwise (and even it concedes that Israel has annexed East Jerusalem).
- (c) More than 40 States and international organizations observe that Israel has furthered its unlawful annexation of Jerusalem and the rest of the West Bank, and has seriously violated its obligations under the United Nations Charter and international humanitarian law, by constructing a vast network of settlements in the OPT, which it has populated with more than 750,000 Israeli settlers, whom its senior government officials have declared will never be withdrawn. No State or organization has suggested that these settlements are anything other than a flagrant breach of international law, as repeatedly affirmed by the Security Council, the General Assembly and the Human Rights Council, and by the Court in 2004.
- (d) A total of 27 States and international organizations contend that Israel has also violated international law by seeking to alter the demography, status and character of the Holy City of Jerusalem, *inter alia*, by formally declaring its annexation of and sovereignty over it, dispossessing and displacing thousands of Palestinians, denying those who remain their political, civil, economic, social and cultural rights, and implanting hundreds of thousands of Israeli settlers in an effort to make its unlawful acquisition of the City permanent. None of the Written Statements contends that these measures and practices are lawful.
- (e) A total of 35 States and international organizations conclude that Israel is violating the *jus cogens* obligation to respect the right to self-determination of the Palestinian people. Just one State contends otherwise.
- (f) A total of 24 States conclude that Israel is violating the *jus cogens* prohibition on racial discrimination by systematically discriminating against Palestinians and denying them, on the basis of their race, their fundamental rights under international human rights and humanitarian law, while 21 of these States conclude that Israel's racial discrimination amounts to apartheid under international law. None of the Written Statements attempts to defend or justify – or deny – Israel's discrimination against Palestinians.

- (g) An extremely large number of States and international organisations consider that these numerous violations by Israel of international law have legal consequences for Israel, for other States and for the United Nations.

7. In sum, the Written Statements submitted by the international community call attention to the flagrancy and persistence of Israel's violations of international law, and its defiance of repeated resolutions by the Security Council, the General Assembly and the Human Rights Council to cease its wrongful acts. They affirm what innumerable United Nations resolutions, committees and experts have found and what is plain for all to see: that Israel has dispossessed, forcibly displaced and subjugated an entire population, and imposed systematic racial discrimination and apartheid over them, depriving millions of Palestinians of their basic fundamental rights, and, under the pretence of occupation, Israel has annexed vast swathes of Palestinian territory, *de jure* and *de facto*, precisely in order to extinguish the Palestinian people's inalienable rights, including their right to self-determination in their own land and the independence of the State of Palestine.

Recent Events: A Rapidly Deteriorating Situation

8. In its Written Statement, the State of Palestine drew attention to the worsening situation in the OPT. Since that Statement was prepared, the situation has continued to deteriorate rapidly, with dire consequences for the Palestinian civilian population under Israel's occupation and particularly in the Gaza Strip. Recent events illustrate the ongoing tragic plight of the Palestinian people as a result of the ever-tightening stranglehold that Israel exerts over their lives through its legislation, policies and practices, including its increasingly lethal resort to violence against them. These events provide further evidence of Israel's resolve to forcibly displace the Palestinian civilian population and illegally annex Palestinian territory, to deny the Palestinian people their right to self-determination, to further entrench its apartheid regime, and to maintain permanent dominion and control over all the territory between the Mediterranean Sea and the Jordan River, for the sole benefit of Jewish Israelis.

9. The examples of this ever-worsening situation are too many to enumerate but some are necessary to highlight. In July 2023, as Palestine's Written Statement was being finalised, Israeli occupation forces carried out a large-scale aerial and ground attack on the Jenin refugee camp, home to more than 23,000 Palestinians. This included aerial and artillery bombardment, missile strikes and ground assaults with live ammunition, killing twelve Palestinians, including four children, injuring at least 140 persons, destroying or damaging hundreds of homes, demolishing

civilian infrastructure, cutting off water and electricity, and displacing hundreds of families². The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugee in the Near East (“UNRWA”) described the damage:

“The Israeli military operation of 4-5 July in Jenin was the most intense in over two decades. For many of the camp’s residents it brought back horrific memories from 2002 when the camp witnessed one of the most severe rounds of violence during the second intifada ...

The camp sustained significant damage – the streets are full of rubble; electricity and water are cut in most parts of the camp and many houses have been destroyed. Today, we had to set up a temporary health point because a major part of the UNRWA health center was destroyed during the operation ...

.....

Too many lives have already been lost in 2023 in the West Bank, among them Palestine Refugees, including children. It is time for people in the West Bank to have peace after decades of pain, destruction, violence, forced displacement and loss of life.”³

10. Since July 2023, Palestinians in the OPT have continued to suffer at the hands of the Israeli military, and grim records for Palestinian injuries and deaths have been set. In just the two-week period following the submission of the State of Palestine’s Written Statement, UNOCHA reported that more than 270 Palestinians (including more than 60 children) were injured by Israeli forces in the West Bank. By 7 August 2023, the number of Palestinians killed by Israel’s forces in the West Bank in 2023 (167) exceeded the total number of Palestinians killed in the whole of 2022 (155 – a total which was itself the highest death toll in 17 years)⁴. By 18 September 2023, the Palestinian death toll had climbed to 181⁵. By then, a total of 38 children had been killed by Israeli forces in the West Bank in 2023 – a death toll which already surpassed the total number of children killed by Israeli forces in

² “OPT: The Humanitarian Impact of the Israeli Forces operation In Jenin, 3-4 July”, United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), 13 July 2023 (<https://tinyurl.com/53e35vh4>).

³ “Statement from the UNRWA Commissioner-General Philippe Lazzarini on the Latest Events in Jenin Refugee Camp”, UNRWA, 6 July 2023 (<https://tinyurl.com/ycxapyfj>).

⁴ “Dozens injured as Israeli forces raid Nablus, blow up building”, *Al Jazeera*, 16 August 2023 (<https://tinyurl.com/yc7znjt5>).

⁵ UNOCHA, Occupied Palestinian territory: Protection of Civilians Report | 5-18 September 2023, 26 September 2023 (<https://tinyurl.com/nrn2cf9f>).

the West Bank in 2022 (35)⁶. United Nations assessments have determined this to be the bloodiest year for Palestinians in the West Bank in over 18 years, and these figures were recorded long before the dramatic deterioration of the situation in this month of October where, in the course of two weeks alone, more than 90 Palestinians have been killed by Israeli Occupation Forces and Israeli settlers in the West Bank, including 27 children.

11. The increase in Israeli violence against Palestinian civilians has gone hand-in-hand with the continued expansion of Israel's illegal settlements and their associated regime, including the demolition of Palestinian homes. Less than a month after Palestine filed its Written Statement, Israel's Minister of Finance, Bezalel Smotrich (who is also the Minister in charge of the so-called "Civil Administration" in the OPT) sought cabinet approval for a plan to spend US\$ 180 million for the expansion of settlements in the West Bank⁷. A day later, he made a public call for Israel to "go on the offensive in Judea and Samaria ... while we work to intensify construction and strengthening of settlements in the area"⁸. Three days later, the head of the West Bank Settlements Regional Council presented a plan to Israel's Prime Minister calling for an approximately sixfold increase in the number of settlers in the northern part of the West Bank from 170,000 (the current figure) to 1,000,000 by 2050⁹.

12. Alongside the expansion of illegal settlements, reports published by UNOCHA indicate that in just the period between 25 July and 18 September 2023 Israel stepped up its policy of dispossessing and displacing Palestinians by demolishing more than 130 Palestinian properties. By mid-October 2023, Israel had demolished more than 792 Palestinian properties in East Jerusalem and the rest of the West Bank since the beginning of the year, displacing more than 1,282 Palestinians¹⁰. The demolished structures included a donor-funded school for Palestinian children in the West Bank¹¹ and hundreds of Palestinian homes. By mid-October 2023, the number of Palestinians displaced from their homes in East Jerusalem and the remainder of the West Bank had surpassed the total for the whole

⁶ *Ibid.*

⁷ "Report: Smotrich to ask cabinet to approve \$180m plan to expand settlements", *The Times of Israel*, 18 August 2023 (<https://tinyurl.com/2284c7eb>).

⁸ "Smotrich: 'IDF must go on the offensive in Judea and Samaria'", *The Times of Israel*, 19 August 2023 (<https://tinyurl.com/5n89zr6w>).

⁹ "Settlers aim for 1 million Israelis living in West Bank's Samaria by 2050", *The Jerusalem Post*, 23 August 2023 (<https://tinyurl.com/bdd7c27j>).

¹⁰ UNOCHA, Data on demolition and displacement in the West Bank (<https://tinyurl.com/6shku7ve>).

¹¹ UNOCHA, Occupied Palestinian territory: Protection of Civilians Report | 8-21 August 2023, 28 August 2023 (<https://tinyurl.com/yckrzxrm>).

of 2022¹², a number only to be surpassed again in October as attacks continued to be perpetrated by Israeli occupation forces and settlers, affecting at least 28 communities.¹³

13. As a result of Israel's deliberate and forced displacement of Palestinians, there are almost no Palestinians remaining in the vast area stretching from Ramallah in the west to the outskirts of Jericho in the east, comprising over 150 square kilometres. After months of intensifying violence against them by armed Israeli settlers, backed by the Israeli occupation forces, Palestinian communities in the area were forced to leave¹⁴. In October 2023, it was reported that Israeli settlers, many more of whom have been armed by the occupying Power, had displaced hundreds more Palestinian Bedouins, estimated to comprise at least 545 civilians, from their traditional communities across large rural areas of the West Bank. A settler spokesperson explained: "It's not the nicest thing to evacuate a population. But we're talking about a war over the land, and this is what is done in times of war."¹⁵ It is a thoroughly one-sided war, where one side is not only armed, but also supported by an occupation army and the other is defenceless and systematically persecuted.

14. Israel's expansion of settlements and demolition of Palestinian homes serve the same purposes: to obtain maximum Palestinian land with minimum Palestinians, i.e., to acquire more land and increase the number of Israeli settlers while decreasing the number of Palestinians living on that land; to make irreversible Israel's dominion and control of the OPT, and to render impossible the self-determination of the Palestinian people and the independence of the State of Palestine. In Palestine's Written Statement it was demonstrated, by means of the Israeli government's own official documents and public statements of its leaders, that Israel's objective is sovereignty over the whole of Jerusalem and the rest of the West Bank. Further proof of Israel's intentions, if there was need, was provided by its Prime Minister in his speech to the General Assembly on 22 September 2023, during which he displayed a map of Israel which depicted it as extending across all

¹² UNOCHA, Occupied Palestinian territory: Protection of Civilians Report | 5-18 September 2023, 26 September 2023 (<https://tinyurl.com/nrn2cf9f>).

¹³ UNOCHA, Displacement of Palestinian herders amid increasing settler violence, 21 September 2023 (<https://tinyurl.com/2kmujmn2>).

¹⁴ "'It's like 1948': Israel cleanses vast West Bank region of nearly all Palestinians", *972+ Magazine*, 31 August 2023 (<https://tinyurl.com/3rfkhay7>).

¹⁵ "Israeli Herders Spread Across West Bank, Displacing Palestinians", *The New York Times*, 3 October 2023 (<https://tinyurl.com/2yskxv9c>).

the land between the Mediterranean Sea and the Jordan River – with no Palestine, in addition to the unlawfully annexed Syrian Golan¹⁶.

15. The Gaza Strip, which has already suffered from a 16-year land, sea and air crippling blockade imposed by Israel, has seen an exponential exacerbation of human suffering since the State of Palestine’s Written Statement was submitted. On 7 October 2023, following the crossing into Israel of armed Palestinians, an estimated 1,400 Israelis were killed, including many civilians, and approximately 200 people were taken captive. Israel immediately responded by tightening its blockade of Gaza, and cutting off entirely the supply of food, water, medicine, electricity and fuel. – effectively strangling the 2.3 million inhabitants. In the words of its Minister of Defence, Yoav Gallant, for Gaza there would be:

“No power, no food, no gas, everything is closed. We are fighting human animals and we act accordingly.”¹⁷

16. Acting “accordingly” turned out to be massive bombardment of Gaza by Israeli military aircraft, missiles, rockets and artillery, causing heavy civilian casualties and wanton destruction. As of this writing, this Israeli onslaught, which is ongoing and includes hundreds of bombing missions per day, has killed an estimated 5,791 Palestinians, almost all of whom were civilians, including 1,421 women and 2,360 children, with more than 15,000 people wounded. Approximately 70 % of the victims have been children, women and elderly persons.¹⁸

17. As of 24 October 2023, 108 Palestinian families have lost ten members or more, with some families completely wiped out, in Israeli attacks on civilian residential areas, which continue to this date.¹⁹ More than 170,000 homes in Gaza have been destroyed or rendered uninhabitable by Israeli bombing, which has also eradicated hospitals, schools, mosques, churches, United Nations facilities, and

¹⁶ See “Netanyahu brandishes map of Israel that includes West Bank and Gaza at UN speech”, *The Times of Israel*, 22 September 2023 (<https://tinyurl.com/38a3cy95>); “Netanyahu under fire for using Greater Land of Israel map at UN”, *The Jerusalem Post*, 22 September 2023, (<https://tinyurl.com/5e5jaxcm>).

¹⁷ “ Hamas Declares War – Updates - Defense minister Yoav Gallant: ‘I ordered a complete siege on Gaza. We are fighting human animals, and we act accordingly’”, *Haaretz*, 9 October 2023 (<https://tinyurl.com/bdeutb5d>). See also Israeli Defense Minister Official X account, Statement of 7 October 2023, 9:02 PM (<https://tinyurl.com/ye299v8k>).

¹⁸ OHCHR X account, 24 October 2023 (<https://tinyurl.com/458jpw8p>).

¹⁹ UNOCHA, *Hostilities in the Gaza Strip and Israel*, 22 October 2023 (<https://tinyurl.com/bxpdypvp>).

other civilian infrastructure. It is estimated that more than 1,500 people remain buried under the rubble of destroyed homes.

18. As a result of Israel's relentless bombing of Gaza, more than 1.4 million Palestinian civilians in Gaza have been forcibly displaced. Hundreds of thousands of civilians fled their homes following an Israeli military order for the "evacuation" of the northern half of Gaza, and headed to the southern half where Israel assured them of safety only to find that they were no safer there because of Israel's unrelenting aerial and missile attacks in the south, which have killed many of these internally displaced persons.²⁰

19. As of this date, there is no sign of relief for the suffering civilian population. Israel has maintained its collective punishment by continuing to cut-off objects indispensable to the survival of the civilian population in violation of international law. Israeli officials have not only acknowledged this, but boasted of it, including the Minister of Energy, Israel Katz:

"Humanitarian aid to Gaza? No electrical switch will be turned on, no water hydrant will be opened and no fuel truck will enter until the Israeli abductees are returned home. Humanitarianism for humanitarianism. And no one will preach us morality."²¹

20. Major General Ghassan Alian, Israel's head of the Coordinator of Government Activities in the Territories (COGAT), declared on 10 October 2023:

"Human animals must be treated as such. There will be no electricity and no water, there will only be destruction. You wanted hell, you will get hell."²²

21. Underscoring Israel's obligation to protect civilians rather than punish them, United Nations Secretary-General António Guterres declared at the Security Council on 24 October 2023:

"Protecting civilians does not mean ordering more than one million people to evacuate to the south, where there is no shelter, no food, no water, no

²⁰ *Ibid.*

²¹ "First Thing: no power, water or fuel for Gaza until hostages are freed, Israel says", *The Guardian*, 12 October 2023 (<https://tinyurl.com/2w35kbek>).

²² COGAT head, Maj Gen Ghassan Alian speaking to Hamas and the residents of Gaza, Video Statement, 10 October 2023 (<https://tinyurl.com/mr2vfvxh>); "COGAT chief addresses Gazans: 'You wanted hell, you will get hell'", *The Times of Israel*, 10 October 2023 (<https://tinyurl.com/5n8ajp36>).

medicine and no fuel, and then continuing to bomb the south itself. I am deeply concerned about the clear violations of international humanitarian law that we are witnessing in Gaza. Let me be clear: No party to an armed conflict is above international humanitarian law.”²³

22. Israel nevertheless persists with its punishment of the entire civilian population of Gaza, resisting international pressure to open a corridor for the delivery of meaningful humanitarian assistance. Starvation of civilians as a method of warfare is prohibited. In this case, given this action is taken by an occupying Power that has the obligation to *protect* the Palestinian population only aggravates the situation.

23. On 21 October 2023, Israel finally agreed to permit a trickle of supplies to cross into Gaza from Egypt, far below the minimum needed to meet basic human needs, avert needless death from lack of water, food, medicines and fuel to power hospital generators and keep them operating. In the first two days, only 30 trucks of supplies were allowed to enter Gaza, less than 10 % of the 300-500 trucks per day that previously delivered essential goods. On 23 October 2023, the United Nations High Commissioner for Human Rights, Volker Türk, pleaded:

“If more aid for Gazans, including fuel, medicine, food and water, does not arrive in days or even hours, many more people in Gaza will die, of hunger, thirst and lack of medical care... I am deeply worried about the struggles for survival of Palestinians in Gaza, including many of my own and other UN staff.”²⁴

24. President of the State of Palestine, Mahmoud Abbas, stressing the need for urgent international efforts to address this grave situation with an immediate ceasefire and the delivery of life-saving humanitarian aid, underscored “the need to move to political action to end the occupation and achieve peace” and “the rejection of practices related to killing civilians or abusing them on both sides”.²⁵ President Abbas continued:

²³ Secretary-General’s remarks to the Security Council – on the Middle East, 24 October 2023 (<https://tinyurl.com/57pz3snw>).

²⁴ Office of the High Commissioner for Human Rights, Press Release, “Israel/OPT: Türk says humanity must come first, urges humanitarian ceasefire”, 23 October 2023 (<https://tinyurl.com/4n2cmyz9>).

²⁵ “President Abbas discusses with King of Jordan ways to stop Israel’s aggression against the Palestinian people”, *Wafa*, 12 October 2023 (<https://tinyurl.com/3f2aztf7>).

“We emphasize the policy of the PLO [Palestine Liberation Organization], the sole legitimate representative of the Palestinian people, which renounces violence and adheres to international legitimacy, peaceful popular resistance, and political action as a path to achieving our national goals of freedom and independence, leading to ending the occupation and embodying the independence of our Palestinian state with East Jerusalem as its capital on the 1967 borders.”²⁶

25. This official position of the State of Palestine was further spelled out by H. E. Riyad Mansour, Minister and Permanent Observer of the State of Palestine to the United Nations, on 8 October 2023:

“Last October ...we stated before the Security Council: the Palestinian people will be free. One day or another. One way or another. We chose the peaceful way, the one the international community advocates for. Do not let Israel prove us wrong. For our sake, and theirs.

This is not a time to let Israel double down on its terrible choices, this is a time to tell Israel it needs to change course. That there is a path to peace, where neither Palestinians nor Israelis are killed. And it is the one diametrically opposed to the one Israel is embarked on.

Israel keeps saying: the blockade and repeated assaults on Gaza are to destroy Hamas military capabilities and ensure security. Clearly and expectedly, [the] blockade and assaults accomplished neither. The only thing they did accomplish was inflicting terrible suffering on an entire civilian population. It is time for an immediate end to the violence and the bloodshed and it is time to end this blockade and open a political horizon.

.....
 We have been calling for a different rationale, a different approach: justice not vengeance, freedom not occupation, peace not war. Our calls should be heeded. The alternative is playing out under our very eyes.

.....
 To all the peacemakers, to all those who believe in the UN Charter and international law, one cannot lose sight of the bigger picture. We need to stand up for the vision enshrined in the resolutions of the Security Council

²⁶ *Ibid.*

and the General Assembly. And to take the necessary measures to ensure compliance with their provisions.

We need to uphold international law, not abandon it.”²⁷

26. The increasing violence against Palestinian civilians, including children, has been accompanied by further expansion of Israeli settlements and *de facto* annexation of Palestinian territory in the West Bank, the continued seizure, demolition of Palestinian homes and displacement of the population, all of which underscores the urgency of these advisory proceedings. As the situation throughout the OPT demonstrates, the questions which the Court has been asked by the General Assembly to address arise in the context of a worsening legal, political and humanitarian crisis, in which the inalienable human rights and legitimate national aspirations of the Palestinian people, including their fundamental rights to life and to self-determination, are being steadily crushed as a matter of Israeli policy and practice.

27. As the State of Palestine has explained in its Written Statement, the treatment of the Palestinian people shocks the conscience of the international community and represents a grave affront to the international rule of law. The Written Statements of the vast majority of States and international organizations confirm this. Indeed, the tragic events that have unfolded since those Statements were submitted provide a stark illustration of the scale of Israel’s contempt for its international legal obligations and hence the urgency and importance of the Court’s authoritative determination of, *inter alia*, the illegality and legal consequences of Israel’s continued occupation of Palestinian territory to guide further action by the General Assembly, the United Nations and all States, in line with their international legal obligations and responsibilities.

The Structure of these Written Comments

28. Following this Introduction, there are four chapters. In conformity with paragraph 3 of the Court’s Order of 3 February 2023, the State of Palestine will limit its second round “comments on the written statements made by other States or organizations”. To that end, it will refrain from repeating what it wrote in its own Written Statement in the first round – except to refer to it when relevant new facts have arisen – and will confine itself to referring to what the overwhelming majority

²⁷ “Riyad Mansour (Palestine) on the situation in the Middle East and Other matters - Security Council Media Stakeout”, *UN Web TV*, 8 October 2023 (<https://tinyurl.com/2yrckn4>).

of the other interveners in these proceedings have said in support of its own submissions, and to briefly rebutting the very few minority positions to the contrary.

29. Each chapter concludes with a specific section devoted to the consequences of Israel's violations – it being recalled that, generally speaking, these constitute serious breaches of obligations under peremptory norms of general international law, with consequences not only for Israel itself but also for all other States and international organisations, including, first and foremost, the United Nations.

30. **Chapter 1** addresses the Court's jurisdiction to issue the Advisory Opinion requested by the General Assembly, and whether it should be exercised. It responds to the arguments made by the small minority of States which invite the Court to decline to exercise that jurisdiction, and it shows that the overwhelming majority of States and international organizations that have submitted Written Statements agree that the Court has jurisdiction and should give an Advisory Opinion in this case, in line with the UN Charter, its Statute and its long-established practice and previous determinations.

31. **Chapter 2** addresses the legality of Israel's prolonged occupation, settlement and annexation of the OPT, as well as its changes to the demography, status and character of Jerusalem.

32. **Chapter 3** addresses Israel's violation of the Palestinian people's right to self-determination, including their right to the independence of their State.

33. **Chapter 4** addresses Israel's violations of the *jus cogens* prohibitions against gross violations of human rights and humanitarian law and human rights and, in particular, its systematic racial discrimination and apartheid against Palestinians based on their race.

Chapter 1.

JURISDICTION AND ADMISSIBILITY

1.1. Palestine demonstrated in its Written Statement that the Court plainly has jurisdiction under Article 65 of its Statute to issue the Advisory Opinion requested by the General Assembly, and that there are no compelling reasons for it to decline to do so.

1.2. The overwhelming majority of the 56 other States and international organizations that made submissions in July 2023 concur. None of them argued that the Court lacks jurisdiction to answer the questions posed to it by the General Assembly. Only a small number contended that the Court should decline to exercise it. In contrast, 43 States and international organizations²⁸ urged the Court to respond to the questions, either expressly by emphasizing that there are no “compelling reasons” for it to decline to do so, underscoring the need for the Court’s response, or implicitly by setting out their views on how the Court should respond to them.²⁹

1.3. In this Chapter, Palestine addresses those few Statements opposed to the issuance of an Advisory Opinion, and demonstrates that none of them offers a reasonable basis, let alone a compelling one, for the Court to refuse the General Assembly’s request.

I. The Legal Character of the Questions

1.4. Both of the questions submitted to the Court are legal in nature. They ask the Court to assess, *under the rules and principles of international law* – including the United Nations Charter, international humanitarian and human rights law, the

²⁸ The States and international organizations which urge the Court to answer the questions are: the African Union, Algeria, Bangladesh, Belize, Bolivia, Brazil, Chile, China, Colombia, Cuba, Djibouti, Egypt, France, The Gambia, Guatemala, Guyana, Indonesia, Ireland, Jordan, Kuwait, the League of Arab States, Lebanon, Liechtenstein, Luxembourg, Malaysia, Maldives, Morocco, Mauritius, Namibia, Norway, Oman, the Organisation of Islamic Cooperation, Pakistan, Qatar, the Russian Federation, Saudi Arabia, Senegal, South Africa, Switzerland, Syrian Arab Republic, Türkiye, the United Arab Emirates and Yemen.

²⁹ The Court has consistently held that it may exercise its discretion not to issue an Advisory Opinion only if there are “compelling reasons” for it not to do so: *Chagos Opinion*, p. 113, para. 65; *Wall Opinion*, p. 156, para. 44; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 416, para. 30.

relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the Court’s Advisory Opinion of 9 July 2004 – (a) what are *the legal consequences* arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from Israel’s prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, from its measures aimed at altering the demographic composition, character and status of Jerusalem, and from its related discriminatory legislation and measures?; and (b) [h]ow do these policies and practices affect the *legal status* of the occupation, and what are the *legal consequences* that arise for all States and the United Nations from this status? By specifying that it is asking for an Opinion *under international law* regarding the “*legal consequences*” of Israel’s policies and practices in the OPT, and the “*legal status*” of the occupation, the General Assembly has undoubtedly posed *legal* questions.

1.5. Twenty-nine States and international organizations offered their observations on the legal character of the General Assembly’s questions. Only two of those States – **Israel**³⁰ and **Italy**³¹ – argued that the Court should decline to answer the questions because they allegedly are of a “political nature” rather than being legal ones. In doing so, those States ignore the Court’s jurisprudence on this issue. That jurisprudence confirms that where, as in the present proceedings, the General Assembly requests an advisory opinion to examine a situation by reference to international law and determine its legal consequences, as is the case here, legal questions are raised within the meaning of Article 65 of the Statute, even if they have political aspects.³² The issue arose, *inter alia*, in the *Wall* Opinion:

“[T]he Court cannot accept the view, which has been advanced in the present proceedings, that it has no jurisdiction because of the ‘political’ character of the question posed. As is clear from its long-standing jurisprudence on this point, the Court considers that the fact that a legal question also has political aspects ‘as, in the nature of things, is the case with so many questions which may arise in international life, does not suffice to deprive it of its character as a ‘legal’ question, and to ‘deprive the Court of its competence expressly conferred in its Statute’.”³³

³⁰ See Written Statement of Israel, pp. 1-2, 4-5.

³¹ See Written Statement of Italy, para. 5.

³² See most recently the *Chagos* Opinion, p. 112, para. 58.

³³ *Wall* Opinion, p. 155, para. 41. The Court cited its earlier advisory opinion in *Legality of the Threat of Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 234, para. 13 (which itself cited its earlier advisory opinions in earlier cases: *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*,

1.6. The Court went on to say that it is:

“in situations in which political considerations are prominent [that] it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate.”³⁴

1.7. Citing the Court’s jurisprudence, **France** therefore rightly concluded that “la question posée par l’Assemblée Générale à la Cour présente indéniablement un caractère ‘juridique’, nonobstant ses implications politiques”³⁵. Many other States expressed similar views. For **Jordan**, these are legal questions and the “political implications which the Court’s opinion might have, have no bearing on the qualification of the questions as legal ones”.³⁶ For **Malaysia**, the General Assembly has asked legal questions that are “not altered by fact that [they] have political salience”³⁷. According to the **Russian Federation**:

“To limit the Assembly’s power to request an advisory opinion to purely legal matters free from political elements (if any such matters exist in the world) would render meaningless the logic of the Charter ... [T]he Court undoubtedly has jurisdiction.”³⁸

1.8. The following States and international organizations also expressed the view that the questions posed to the Court are of a legal character, and that the Court should answer them in its Advisory Opinion: the African Union, Algeria, Bangladesh, Brazil, Chile, China, Colombia, Egypt, France, Guatemala, Indonesia, Ireland, Italy, Jordan, Lebanon, Liechtenstein, Luxembourg, Malaysia, Maldives, Mauritius, Namibia, the Organisation of Islamic Cooperation, Pakistan, Qatar, the

p. 172, para. 14; *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, Advisory Opinion, I.C.J. Reports 1947-1948, pp. 61-62; *Competence of the General Assembly for the Admission of a State to the United Nations*, Advisory Opinion, I.C.J. Reports 1950, pp. 6-7; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, I.C.J. Reports 1962, p. 155).

³⁴ *Wall Opinion*, p. 155, para. 41, citing *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports 1980, p. 87, para. 33.

³⁵ Written Statement of France, para. 8 (unofficial translation: “the question asked by the General Assembly to the Court is undeniably of a ‘legal’ nature, notwithstanding its political implications”).

³⁶ Written Statement of Jordan, paras. 2.8-2.9.

³⁷ Written Statement of Malaysia, paras. 13-14.

³⁸ Written Statement of the Russian Federation, paras. 16-17.

Russian Federation, Saudi Arabia, South Africa, Switzerland, United Arab Emirates.³⁹

1.9. In Palestine's view, shared by the vast majority of the Written Statements that have addressed this issue, the General Assembly's questions are plainly of a legal character and should be answered by the Court.

II. The Questions Concern Issues of Interest for the General Assembly and the International Community as a Whole

1.10. In its Advisory Opinion in the *Wall* case, the Court found that the subject matter of the General Assembly's request – concerning the legality of Israel's construction of a wall in the Occupied Palestinian Territory, including East Jerusalem – could not be regarded solely as a bilateral matter between Israel and Palestine. To the contrary:

“Given the powers and responsibilities of the United Nations in questions relating to international peace and security, it is the Court's view that the construction of the wall must be deemed to be directly of concern to the United Nations. The responsibility of the United Nations in this matter also has its origin in the Mandate and the Partition Resolution concerning Palestine ... This responsibility has been described by the General Assembly as ‘a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy’ (General Assembly resolution 57/107 of 3 December 2002). Within the institutional framework of the Organization, this responsibility has been manifested by the adoption of many Security Council and General Assembly resolutions, and by the creation of several subsidiary bodies specifically established to assist in the realization of the inalienable rights of the Palestinian people.”⁴⁰

³⁹ See Written Statements of the African Union, paras. 43-47; of Algeria, p. 13; of Bangladesh, para. 5; of Brazil, para. 10; of Chile, para. 17; of China, para. 9; of Colombia, paras. 2.6-2.7; of Egypt, paras. 26-35; of France, para. 8; of Guatemala, paras. 13-14; of Indonesia, paras. 12-15; of Ireland, para. 8; of Jordan, paras. 2.1.-2.9; of Lebanon, para. 11; of Liechtenstein, paras. 11-14; of Luxembourg, paras. 11-14; of Malaysia, paras. 13-14; of the Maldives, para. 6; of Mauritius, para. 5; of Namibia, para. 14; of the Organisation of Islamic Cooperation, paras. 17-19; of Pakistan, paras. 9-11; of Qatar, para. 6.98; of the Russian Federation, para. 16; of Saudi Arabia, paras. 9-11; of South Africa, paras. 12, 19-25; of Switzerland, para. 9; and of the United Arab Emirates, para. 6.

⁴⁰ *Wall* Opinion, p. 159, para. 49.

1.11. On these bases, the Court found:

“The opinion is requested on a question which is of particularly acute concern to the United Nations, and one which is located in a much broader frame of reference than a bilateral dispute. In the circumstances, the Court does not consider that to give an opinion would have the effect of circumventing the principle of consent to judicial settlement, and the Court accordingly cannot, in the exercise of its discretion, decline to give an opinion on that ground.”⁴¹

1.12. It seems obvious that, if the legal consequences of Israel’s construction of a wall in the Occupied Palestinian Territory were of “particularly acute concern to the United Nations”, then the same must be true *a fortiori* of Israel’s ongoing denial of the right of self-determination of the Palestinian people, its prolonged occupation, annexation and settlement of the OPT, its purported changes to the legal status, character and demography of Jerusalem, and its discriminatory legislation and measures, since these issues are all subjects of numerous Security Council and General Assembly resolutions, and reports by the subsidiary bodies described by the Court in the *Wall* Opinion and pertain to violations of peremptory norms of international law of an *erga omnes* character. Sixteen States and international organizations have explicitly drawn this conclusion, and expressed their view that the Court must answer the General Assembly’s questions for this paramount reason.⁴²

1.13. Nevertheless, five States – **Canada**⁴³, **Fiji**⁴⁴, **Hungary**⁴⁵, **Togo**⁴⁶ and the **United Kingdom**⁴⁷ – contend that were the Court to answer the General Assembly’s questions in these proceedings, it would violate the principle of consent. Significantly, none of the five explains how their position can be reconciled with the Court’s long-standing jurisprudence, especially its Opinion in the *Wall* proceedings. All Fiji could say was that those proceedings involved only

⁴¹ *Ibid.*, para. 50.

⁴² See the Written Statements of the African Union, para. 52; of Bangladesh, para. 6; of Chile, paras. 22-24; of China, paras. 12-14; of Colombia, paras. 1.3., 3.6-3.14; of Egypt, paras. 43-44; of France, paras. 15-16; of Indonesia, para. 20; of Jordan, paras. 2.12.-2.15; of Malaysia, paras. 17-18; of Qatar, paras. 6.100-6.102; of the Russian Federation, paras. 20-21; of Saudi Arabia, paras. 16-20; of South Africa, paras. 33-38; of the United Arab Emirates, paras. 7-10; and of Yemen, paras. 8-9.

⁴³ Written Statement of Canada, paras. 12-16.

⁴⁴ Written Statement of Fiji, pp. 1, 3-4.

⁴⁵ Written Statement of Hungary, paras. 2, 17-19, 37, 41.

⁴⁶ Written Statement of Togo, para. 7.

⁴⁷ Written Statement of the United Kingdom, paras. 5.1, 50.1, 52-61.

“a part of the greater whole”⁴⁸. But that would make the importance of, and need for, the Court’s Opinion in this case even greater than in *Wall*. Indeed, the prolonged occupation, annexation and settlement of Palestinian territory, together with the denial of the right of self-determination and the imposition of systematic racial discrimination amounting to apartheid, pose even greater threats to international peace and security, and to the “inalienable rights of the Palestinian people” than the construction of the wall alone, as illegal and harmful as it is.

1.14. The Court made clear at the end of its *Wall* Opinion that it was the “whole” of “the Israeli-Palestinian conflict” that occupied the attention of the United Nations, and required its constant efforts to achieve a peaceful resolution:

“The Court, being concerned to lend its support to the purposes and principles laid down in the United Nations Charter, in particular the maintenance of international peace and security and the peaceful settlement of disputes, would emphasize the urgent necessity for the United Nations as a whole to redouble its efforts to bring the Israeli-Palestinian conflict, which continues to pose a threat to international peace and security, to a speedy conclusion, thereby establishing a just and lasting peace in the region.”⁴⁹

1.15. Illustrative of the views of States urging the Court, on these bases, to issue its Opinion in this case are those of the following:

(a) **Brazil:**

“In the present case, the object of the request is to obtain an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions. The questions raised by the General Assembly are located in a much broader frame of reference than a bilateral dispute. They relate to the legal consequences of peremptory norms of general international law, such as the right of self-determination, the prohibition of annexation by force and the prohibition of discrimination. These norms reflect and protect fundamental values of the international community, and give rise to obligations ‘*erga omnes*’, owed to the international community as a whole.”⁵⁰

⁴⁸ Written Statement of Fiji, p. 4.

⁴⁹ *Wall* Opinion, p. 200, para. 161.

⁵⁰ Written Statement of Brazil, para. 12.

(b) **China:**

“In this case, delivering an advisory opinion by the International Court of Justice would not circumvent the principle of consent. The question of Palestine, while involving both Israel and Palestine, also concerns international peace and security, and is closely related to the responsibilities of the United Nations. ...

The United Nations’ responsibility for the question of Palestine has its root in the ‘Mandate’ system of the League of Nations. The question of Palestine has always been an important part of the work of the UN since its founding. For more than 70 years, the UN has approached the question of Palestine as a matter of international peace and security. The UN Security Council and General Assembly have adopted numerous resolutions in this regard. Moreover, the UN General Assembly resolutions have reaffirmed ‘the permanent responsibility of the United Nations with regard to the question of Palestine until the question is resolved in all its aspects in accordance with international law and relevant resolutions.’”⁵¹

(c) **Colombia:**

“[A] pronouncement of the Court on the legal consequences arising from the violation of the right of self-determination, from prolonged occupation, settlement, and annexation and on the legal status of an occupation in view of the policies and practices of the occupying State is of the utmost relevance to the General Assembly.”⁵²

(d) **Ireland:**

“[I]n Ireland’s view it is proper in the present case that the Court does provide an advisory opinion as requested by the General Assembly. Ireland takes this view because, regardless of whether the relevant Israeli or Palestinian authorities withhold consent to its provision, the question of the Occupied Palestinian Territory is directly of concern to the United Nations itself and is a question located in a much broader frame of reference than a bilateral dispute, an important factor in the Court’s consideration of the exercise of this power.”⁵³

⁵¹ Written Statement of China, paras. 12-13 (footnotes omitted).

⁵² Written Statement of Colombia, para. 3.15.

⁵³ Written Statement of Ireland, para. 9.

(e) Liechtenstein:

“Advisory opinions regarding the right to self-determination are of great importance to the General Assembly [which] has ‘a permanent responsibility towards the question of Palestine’”⁵⁴

(f) Qatar:

“Clear and definitive answers to the questions asked will provide critical guidance to the United Nations and to the international community as a whole about the legal principles that must guide the future resolution of these issues.”⁵⁵

1.16. Other States and international organizations holding *mutatis mutandis* identical views include Brazil⁵⁶, Chile⁵⁷, China⁵⁸, Colombia⁵⁹, Indonesia⁶⁰, Ireland⁶¹, Luxembourg⁶², Mauritius⁶³, Namibia⁶⁴, the Russian Federation⁶⁵, Saudi Arabia⁶⁶, Switzerland⁶⁷, United Arab Emirates⁶⁸ and Yemen⁶⁹.

1.17. As shown by the vast majority of Written Statements, the questions posed by the General Assembly seek the Court’s guidance on matters of fundamental and longstanding importance and concern to the United Nations, and cannot therefore be characterized as pertaining to a strictly bilateral dispute or as circumventing the principle of consent.

⁵⁴ Written Statement of Liechtenstein, para. 16.

⁵⁵ Written Statement of Qatar, para. 6.105.

⁵⁶ Written Statement of Brazil, para. 12.

⁵⁷ Written Statement of Chile, paras. 11-17.

⁵⁸ Written Statement of China, paras. 12-15.

⁵⁹ Written Statement of Colombia, paras. 1.3, 3.10-3.16, 5.3-5.6.

⁶⁰ Written Statement of Indonesia, para. 22.

⁶¹ Written Statement of Ireland, paras. 9-10.

⁶² Written Statement of Luxembourg, paras. 20-23.

⁶³ Written Statement of Mauritius, para. 5.

⁶⁴ Written Statement of Namibia, para. 16.

⁶⁵ Written Statement of the Russian Federation, paras. 21-22.

⁶⁶ Written Statement of Saudi Arabia, paras. 17-20.

⁶⁷ Written Statement of Switzerland, para. 16.

⁶⁸ Written Statement of the United Arab Emirates, paras. 7-10.

⁶⁹ Written Statement of Yemen, paras. 8-10.

III. Contributing to a Peaceful Settlement Based on Respect for International Law

1.18. Many States and international organizations have called upon the Court to issue the Opinion requested by the General Assembly because doing so, in their judgment, would contribute to upholding the rule of international law and achieving a peaceful and just resolution of the question of Palestine and the conflict in accordance with international law, by clarifying the parties' respective legal rights and obligations. That is the kind of settlement that repeated resolutions by the Security Council and the General Assembly have sought to achieve.

1.19. Resolution 2334, adopted by the Security Council on 23 December 2016, provided that the Council:

“*Guided* by the purposes and principles of the Charter of the United Nations, and reaffirming, *inter alia*, the inadmissibility of the acquisition of territory by force,

.....

1. *Reaffirms* that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace”.⁷⁰

1.20. The Security Council renewed its call for a settlement based on international law and its prior resolutions in a statement by its President on “The situation in the Middle East, including the Palestinian question”, issued on 20 February 2023:

“The Security Council reaffirms its unwavering commitment to the *vision of the two-State solution* where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders, *consistent with international law and relevant UN resolutions*.”⁷¹

1.21. Likewise, the General Assembly has adopted numerous resolutions affirming the necessity of efforts contributing to a just and peaceful solution. The

⁷⁰ Security Council, Resolution 2334 (2016), 23 December 2016.

⁷¹ Statement by the President of the Security Council, S/PRST/2023/1, 20 February 2023 (<https://undocs.org/S/PRST/2023/1>) (emphasis added).

most recent is resolution 77/25 of 30 November 2022⁷², pertaining to the Peaceful Settlement of the Question of Palestine, in which the General Assembly re-endorsed its long-standing principles, *inter alia*:

“*Reaffirming* the permanent responsibility of the United Nations with respect to the question of Palestine until it is resolved in all its aspects in accordance with international law and relevant resolutions;

.....
Reaffirming the principle of the inadmissibility of the acquisition of territory by force

.....
 1. *Reiterates* its call for the achievement, without delay, of a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions, including Security Council resolution 2334 (2016), the Madrid terms of reference, including the principle of land for peace, the Arab Peace initiative and the Quartet road map, and an end to the Israeli occupation which began in 1967, including of East Jerusalem, and reaffirms in this regard its unwavering support, *in accordance with international law*, for the two-State solution of Israel and Palestine, living side by side in peace and security within recognized borders, based on the pre-1967 borders;

.....
 4. *Stresses that compliance with and respect for the Charter of the United Nations and international law, including international humanitarian law and international human rights law, is a cornerstone of peace and security in the region*”.

1.22. In the *Wall* Opinion, the Court likewise called for implementation of “all relevant Security Council resolutions” and a solution to the Israeli-Palestinian conflict “on the basis of international law”:

“The Court considers that it has a duty to draw the attention of the General Assembly, to which the present Opinion is addressed, to the need for these efforts to be encouraged with a view to achieving as soon as possible, *on the basis of international law*, a negotiated solution to the outstanding problems

⁷² General Assembly, Resolution 77/25, 30 November 2022, preamble and paras. 1 and 4 (<https://undocs.org/A/RES/77/25>) (emphasis added).

and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours, with peace and security for all in the region.”⁷³

1.23. It should be undisputed that the Court, as the United Nations’ highest judicial body, has an essential role to play, when called upon by the General Assembly to provide legal advice that the Assembly considers necessary to the exercise of its responsibility to promote a just, lasting, comprehensive and peaceful settlement “in accordance with” or “on the basis of international law”. In such circumstances, there are “compelling reasons” to *respond* to the General Assembly’s questions, not to decline to do so.

1.24. Yet, five States – **Fiji**⁷⁴, **Hungary**⁷⁵, **Israel**⁷⁶, **Togo**⁷⁷ and **Zambia**⁷⁸ – argue that the Court should decline to issue an Opinion in order to avoid prejudice to, or interference with, ongoing negotiations. Six other States, namely the **Czech Republic**⁷⁹, **Guatemala**⁸⁰, **Italy**⁸¹, **Nauru**⁸², the **Russian Federation**⁸³ and the **United States**⁸⁴, express the view that, in rendering its Opinion, the Court should take care not to upset the existing “framework” for negotiations. There are however at least three sets of reasons why the Court should not be deterred from answering the General Assembly’s questions because of the impact of its Advisory Opinion on “negotiations”.

1.25. *First*, as emphasized above, the Court, as the highest international judicial authority, is the appropriate body to advise the political organs of the United Nations on legal issues that are fundamental to the achievement of a peaceful settlement in accordance with international law, as called for repeatedly in the resolutions of the Security Council and the General Assembly. Palestine has made

⁷³ *Wall* Opinion, pp. 200-201, para. 162 (emphasis added).

⁷⁴ Written Statement of Fiji, pp. 3-5.

⁷⁵ Written Statement of Hungary, paras. 2, 11-30, 39, 41.

⁷⁶ Written Statement of Israel, pp. 3-5.

⁷⁷ Written Statement of Togo, paras. 7-9.

⁷⁸ Written Statement of Zambia, p. 2.

⁷⁹ Written Statement of the Czech Republic, pp. 2-3.

⁸⁰ Written Statement of Guatemala, paras. 25, 45-48.

⁸¹ Written Statement of Italy, para. 5.

⁸² Written Statement of Nauru, paras. 3-4, 17-19.

⁸³ Written Statement of the Russian Federation, paras. 26, 57-65, 82 and Conclusion, sub-para. (7).

⁸⁴ Written Statement of the United States, paras. 1.8, 2.27, 3.1-3.22, 5.6-5.7.

clear, in its Written Statement⁸⁵, as well as in its statements in the United Nations, that it fully supports these resolutions, and is committed to their implementation towards the realization of a just and peaceful solution that ends the Israeli occupation that began in 1967 and fulfils the two-State solution based on the pre-1967 borders. It urges, along with the vast majority of States and international organizations that have submitted their Written Statements, that the Court perform the judicial function assigned to it by the Charter, and provide its legal advice to the General Assembly, in response to the latter's questions, which would contribute positively to a peaceful settlement based on international law.

1.26. *Second*, the arguments of the five States that argue against an Opinion, and the six that call for the Court to take negotiations into account in issuing it, are founded on a false premise, because there are no ongoing negotiations for the Court to defer to. In fact, there have been no negotiations between Israel and Palestine since 2014, almost a decade ago. All of the peace initiatives referred to in the resolutions of the Security Council and the General Assembly, and by the Court in the *Wall* Opinion, have been undermined by the very measures, practices and policies of Israel that are the subject of the General Assembly's questions. The complete absence of negotiations or a current negotiating process is even acknowledged by the **United States**, which admits that direct negotiations "are not currently occurring"⁸⁶.

1.27. *Third*, as shown in Palestine's Written Statement, Israel has long been pursuing, contrary to Security Council resolutions and the prohibition on the acquisition of territory by force, the *de jure* and *de facto* annexation of Jerusalem and the rest of the West Bank⁸⁷. A succession of its Prime Ministers have declared that its settlements in the Occupied Palestinian Territory, including East Jerusalem, which now number more than 250 settlements with hundreds of thousands of Israeli settlers, will never be removed⁸⁸, with open pledges by Israeli officials to increase the number of settlements and to expedite the transfer of Israeli settlers to the Palestinian territory in order to surpass one million settlers as rapidly as possible⁸⁹. Moreover, the leaders of its current government, including its Prime Minister, have

⁸⁵ See Written Statement of the State of Palestine, para. 1.32.

⁸⁶ Written Statement of the United States, para. 5.2.

⁸⁷ Written Statement of the State of Palestine, Chapter 3.

⁸⁸ *Ibid.*, paras. 3.96, 3.179-3.192 and 3.215.

⁸⁹ "Smotrich wants one million West Bank settlers. That's not so far-fetched", +927 *Magazine*, 12 July 2023 (<https://tinyurl.com/26b24uz6>).

recently vowed to “crush” the Palestinian ambition for an independent State⁹⁰. The Minister in charge of civil administration of the OPT has openly denied the existence of the Palestinian people⁹¹, and publicly proclaimed that there is room in the West Bank (which Israeli leaders refer to as “Judea and Samaria”) for only one national aspiration: that of the Jewish people⁹². In short, the reasons why there are no negotiations are not only Israel’s rejection of them but also its publicly stated goal of declaring “sovereignty” over the West Bank (as it has already done in regard to Jerusalem); its ongoing annexation of ever larger parts of the West Bank; its implantation of thousands more Israeli settlers in broader areas of the Occupied Palestinian Territory; its harassment of and discrimination against Palestinians in Jerusalem and the rest of the West Bank, with the goal of driving them from their homes, to confine them in isolated villages cut off from one another, and to facilitate its seizure of more Palestinian land for expanding Israeli settlements; its inhumane blockade and aerial bombardment of civilian residential areas and infrastructure in the Gaza Strip; its systematic and racially discriminatory denial of fundamental human and humanitarian rights for the Palestinian people; and, by all of these means, its denial of their right to self-determination. What incentives exist for Israel to negotiate in good faith, on the basis of international law, when it can achieve all of its objectives unlawfully, unilaterally and by force, as a *fait accompli*, without fear of accountability or any legal consequences imposed by the international community?

1.28. By its unlawful actions, Israel has demonstrated in words and deeds that it has no interest in the two-State solution advocated by the United Nations and the vast majority of the international community. It has made clear that it wants, and will tolerate, only one State – Israel – between the Mediterranean Sea and the Jordan River, as shown on the map that the Israeli Prime Minister displayed in his most

⁹⁰ “Netanyahu said to tell MKs: Israel ‘needs the PA,’ must ‘crush’ statehood aspirations”, *Times of Israel*, 26 June 2023 (<https://tinyurl.com/2bwbnb74>).

⁹¹ “Israeli minister condemned for claiming ‘no such thing’ as a Palestinian people”, *The Guardian*, 20 March 2023 (<https://tinyurl.com/4z2erm5a>). See also an earlier statement on this B. Smotrich, “Israel’s Decisive Plan”, *Hashiloach*, 7 September 2017 (<https://tinyurl.com/3uuphf8c>).

⁹² B. Smotrich, “Israel’s Decisive Plan”, *Hashiloach*, 7 September 2017 (<https://tinyurl.com/3uuphf8c>).

recent speech before the General Assembly on 22 September 2023, as depicted below.

**Benjamin Netanyahu addresses the general debate
of the 78th Session of the United Nations General Assembly**
(New York, 22 September 2023)



Geographic Projection



Geographic Reality



Figure 1

1.29. The “framework” for negotiations developed over the past 30 years – invoked by the six States identified above in their Written Statements - was always based on respecting applicable United Nations resolutions and international law, not justifying their continued breach.

1.30. The United States⁹³ and the United Kingdom⁹⁴ refer to preservation of the “Land for Peace” framework for the achievement of a peaceful settlement. This is reflected in the Arab Peace Initiative of 2002, cited in Security Council resolution 2334 (2016) and General Assembly resolution 77/25, which calls for:

“full Israeli withdrawal from all the Arab territories occupied since June 1967, in implementation of Security Council Resolutions 242 and 338, reaffirmed by the Madrid Conference of 1991 and the land for peace principle, and Israel's acceptance of an independent Palestinian State, with East Jerusalem as its capital, in return for the establishment of normal relations in the context of a comprehensive peace with Israel.”⁹⁵

1.31. In this framework, and bearing in mind that the relevant Security Council resolutions render inadmissible the acquisition of territory by force, “Land for Peace” can only mean what is described in the Arab Peace Initiative as “full Israeli withdrawal from all the Arab territories occupied since June 1967”, and “Israel’s acceptance of an independent Palestinian State with East Jerusalem as its capital”. In Palestine’s view, international law requires no less. As Judge Al-Khasawneh emphasized in his concurring opinion in the *Wall* proceedings:

“The discharge of international obligations, including *erga omnes* obligations cannot be made conditional upon negotiations ... [I]t is of utmost importance *if these negotiations are not to produce non-principled solutions, that they be grounded in law.*”⁹⁶

⁹³ Written Statement of the United States, paras. 1.4, 1.10, 2.1-2.21, 3.11, 3.16-3.17, 3.20 and 5.5.

⁹⁴ Written Statement of the United Kingdom, paras. 10-30.

⁹⁵ “Text of Arab peace initiative adopted at Beirut summit”, Agence France Presse (AFP), 28 March 2002, *European Parliament Meeting Documents* (<https://tinyurl.com/46byernj>).

⁹⁶ *Wall* Opinion, *Separate Opinion of Judge Al-Khasawneh*, p. 239, para. 13 (emphasis added).

1.32. It is thus essential for the Court to exercise its judicial function by setting out the applicable legal rules, and the legal rights and obligations of the parties, so that any future negotiations are “grounded in law”.

1.33. The State of Palestine trusts that the Court, in issuing its Advisory Opinion, will reinforce the rule of international law as it applies to the Question of Palestine and the requirements for a just and peaceful solution, as established in the relevant Security Council and General Assembly resolutions over many years. The possibility of future negotiations cannot be used as a pretext for avoiding the application of international law to this crucial matter, or for ongoing breaches of international law, especially the denial of Palestinian self-determination and violations of other peremptory norms of an *erga omnes* character from which no derogation is permitted.

1.34. For these reasons, the vast majority of States and international organizations that have addressed this issue have taken the position that “negotiations” and the existence of a “negotiating framework” are not valid reasons, let alone compelling ones, for the Court to decline to issue an Advisory Opinion in this case, or to dilute its responses to the General Assembly’s legal questions. The General Assembly itself rejected this argument in adopting the resolution requesting the Advisory Opinion. Examples of those rejecting it in their Written Statements include the following:

(a) Bangladesh:

“Finally, any objections to the effect that an advisory opinion would threaten to undermine political peace negotiations, that conventional wisdom: (i) runs contrary to the law of state responsibility in circumstances where Israel’s conduct is unlawful; and (ii) to date, has been nothing short of an abject failure. International law must dictate the terms of any future solution to the plight of the Palestinian people. The Palestinian people must not be compelled to negotiate their freedom in the face of unlawful conduct.”⁹⁷

(b) China:

“The question of Palestine has been on the agenda of the United Nations for over 70 years, and Israel has occupied the Palestinian territories for more than half a century. Yet the legitimate national rights of the Palestinian people have not been restored as generations of Palestinians have been waiting in vain their entire lives for that restoration. No permanent peace

⁹⁷ Written Statement of Bangladesh, para. 8.

agreement has been reached between Palestine and Israel, and there is still a long way to go to resolve the question of Palestine. Justice has already been late in coming. It must not be absent.”⁹⁸

(c) Ireland:

“Not only has Israel ignored that demand of the Council, but settlement building has actually intensified dramatically since that time. ... Settlement development undermines the viability of a future contiguous Palestinian state and thus the prospect of reaching any just, comprehensive and enduring peace. In the absence of any immediate prospect of a negotiated outcome between the parties Ireland voted in favour of resolution 77/247 (2022) and believes that, at this juncture, clarification by the Court of the international law issues raised by the prolonged occupation of the Palestinian Territory can only help provide a stable foundation on which to build a just resolution of this protracted conflict.”⁹⁹

(d) Norway:

“It is the view of Norway that an advisory opinion of the ICJ will provide important guidance to the General Assembly and the Security Council in furthering the process of reaching a negotiated two-state solution based on internationally agreed parameters and public international law, and Norway therefore looks forward to studying its deliberations.”¹⁰⁰

(e) Switzerland:

“La Cour devrait exercer sa compétence indépendamment de la possibilité que son avis consultatif ait une influence sur les négociations. En effet, il n’incombe pas à la Cour de déterminer si son avis consultatif pourrait avoir une quelconque composante politique, mais plutôt si les questions qui lui ont été soumises ont un caractère juridique.”¹⁰¹

⁹⁸ Written Statement of China, para. 5.

⁹⁹ Written Statement of Ireland, para. 4.

¹⁰⁰ Written Statement of Norway, p. 2.

¹⁰¹ Written Statement of Switzerland, para. 22 (unofficial translation: “The Court must exercise its competence independently of the possibility that its advisory opinion might have an influence on the negotiations. Indeed, it is not for the Court to determine whether its advisory opinion could have any political component, but rather whether the questions submitted to it are of a legal character.”).

f) **United Arab Emirates:**

“The UAE considers that the exercise by the Court of its jurisdiction will provide important guidance to and will support - rather than impede - a negotiated solution to the Israeli-Palestinian conflict ... Given the increasingly dire situation on the ground and the growing threats to the viability of a two-State solution, the Court’s opinion will provide an ever more critical foundation and impetus for achieving a just and lawful resolution to the conflict.”¹⁰²

1.35. Other States that share these views include **Colombia**¹⁰³, **Indonesia**¹⁰⁴ and **Qatar**¹⁰⁵.

1.36. As these Written Statements make clear, there would be no reasonable basis, let alone a compelling one, for the Court to decline to issue an Advisory Opinion in deference to negotiations that are currently non-existing. Nor does the prospect of future negotiations require the Court to refrain from giving its straightforward answers to the General Assembly’s legal questions. Successful negotiations – including a two-State solution with Israel and an independent Palestinian State living in peace and security that the Security Council and General Assembly have called for – must be based on international law, and the Court’s Opinion is essential to that end.

IV. There Are Sufficient Factual Elements at the Court’s Disposal

1.37. Only one State – the **United Kingdom** – has argued that the Court should not issue an Advisory Opinion because of the absence of “a complete or accurate evidential picture before it”, such that “it cannot proceed in a manner compatible with its judicial character”¹⁰⁶. This is similar to the argument made by the UK in the *Chagos* advisory proceedings, in which it also urged the Court to decline to issue an Opinion on the basis of the complexity of the factual elements. In rejecting this argument, the Court explained:

“It has been argued by some participants that the questions raise complex and disputed factual issues which are not suitable for determination in advisory proceedings. Those participants have contended that in these

¹⁰² Written Statement of the United Arab Emirates, para. 8.

¹⁰³ Written Statement of Colombia, paras. 3.15-3.16.

¹⁰⁴ Written Statement of Indonesia, paras. 21-22.

¹⁰⁵ Written Statement of Qatar, paras. 6.103-6.105.

¹⁰⁶ Written Statement of the United Kingdom, para. 68.

proceedings the Court does not have sufficient information and evidence to arrive at a conclusion on the complex and disputed questions of fact before it.

.....

The Court observes that an abundance of material has been presented before it including a voluminous dossier from the United Nations. Moreover, many participants have submitted written statements and written comments and made oral statements which contain information relevant to answering the questions.”¹⁰⁷

1.38. Recalling its prior jurisprudence, the Court:

“concluded that what was decisive was whether it had ‘sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character’ (*I.C.J. Reports 1975*, pp. 28-29, para. 46)”¹⁰⁸;

and that:

“there is in the present proceedings sufficient information on the facts before it for the Court to give the requested opinion. Accordingly, the Court cannot decline to answer the questions put to it.”¹⁰⁹

1.39. In the present proceedings, there can be no doubt that the Court has “sufficient information on the facts” to issue its Advisory Opinion. The Secretary-General has presented the Court with a voluminous dossier containing an abundance of factual material, including numerous reports of authoritative United Nations bodies. And many of the States and international organizations that submitted Written Statements in July 2023 provided additional relevant factual material. In brief, the factual elements of the present case are among the most well-documented of any matter within the United Nations system, and they provide more than a sufficient basis for the Court to make its legal determinations. Though voluminous, the factual material is consistent through and through. All the reports converge on the central elements: that Israel’s policies and practices have denied the Palestinian people their right of self-determination; that Israel has annexed by

¹⁰⁷ *Chagos Opinion*, pp. 114-115, paras. 69 and 73.

¹⁰⁸ *Ibid.*, p. 114, para. 71.

¹⁰⁹ *Ibid.*, p. 115, para. 74.

de jure and *de facto* means Jerusalem and the rest of the West Bank; that it has changed the demography, status and character of the Holy City; and that by its legislative and administrative measures, as well as by its armed force, it has imposed a regime of systematic discrimination against the Palestinian people based on their race and national identity with the intention of maintaining permanent dominion over them. The evidence on these issues is clear and overwhelming, and it is not contradicted.

1.40. Notwithstanding the foregoing, the United Kingdom further suggests there would be a lack of fairness or due process if, as in the *Wall* case, “Israel does not participate in the advisory proceedings by furnishing evidence relevant to the Request”¹¹⁰. This, it is said, would result in the Court lacking “material explaining the Israeli side of the picture”¹¹¹. There are several responses to these assertions. *First*, Israel is participating; it submitted its Written Statement on 24 July 2023. *Second*, Israel should not be allowed to prevent the Court from issuing its Opinion, and effectively vetoing these proceedings, should it refuse to participate further. *Third*, the evidential record supplied by the Secretary General, and in the Written Statements of some States (including Israel itself), are replete with statements of Israel’s positions on the matters at issue, which are also widely available from public sources.

1.41. The United Kingdom stands alone in opposing the issuance of an Opinion on these grounds. Many States and international organizations have addressed this issue and concluded that the Court has sufficient information and evidence to render its Opinion. Some examples are:

(a) **African Union:**

“Few international situations have been better documented, by credible and authoritative sources, than the long-standing occupation of Palestine. When deciding to put these questions to the Court, the General Assembly relied on multiple reports and factual investigations. The humongous size of the Dossier introduced by the UN Secretariat in line with Article 65(2) of the Statute of the Court (the ‘Dossier’), comprising 29,159 pages spread over 3,206 documents, guarantees that the Court will be in possession of ‘all documents likely to throw light upon the question.’ Finally, the Court

¹¹⁰ Written Statement of the United Kingdom, para. 67.1.

¹¹¹ *Ibid.*

remains free to request further information or exercise its general powers in evidentiary matters.”¹¹²

(b) **Saudi Arabia:**

“The situation in the Occupied Palestinian Territories has been well documented and has been the subject of careful attention from the General Assembly, the Security Council and other U.N. organs and specialized agencies for many years. In addition, the Court has at its disposal numerous recent reports of these U.N. organs ... and in the dossier of documents compiled by the U.N. Secretariat pursuant to Article 65(2) of the Court’s Statute, which give sufficient factual information and evidence ‘to enable [the Court] to pronounce on legal questions’ [citing the *Namibia* Advisory Opinion, p. 27, para. 40].”¹¹³

(c) **Switzerland:**

“En l’espèce, la situation à l’origine de la demande d’avis consultatif est largement documentée, notamment à travers de multiples rapports annuels du Secrétaire général des Nations Unies et du Haut-Commissaire des Nations Unies aux droits de l’homme.”¹¹⁴

1.42. Finally, contrary to what **Israel**¹¹⁵, as well as the **Czech Republic**¹¹⁶, have claimed, the Court, in considering the factual information and evidence that has been placed before it, is not asked to simply presume Israeli violations of international law. Rather, while these violations have been repeatedly addressed and condemned by the Security Council, the General Assembly and Human Rights Council – and, to a certain extent by the Court itself in the *Wall* Opinion – it is for the Court, in exercising its judicial function, to independently evaluate the factual materials that have been submitted to it, and to make findings as to violations of international law taking place, and as to ensuing legal consequences thereof.

¹¹² Written Statement of the African Union, para. 51 (footnotes omitted).

¹¹³ Written Statement of Saudi Arabia, para. 21.

¹¹⁴ Written Statement of Switzerland, para. 19 (unofficial translation: “In the present case, the situation giving rise to the request for an advisory opinion has been amply documented, in particular through numerous annual reports by the Secretary-General of the United Nations and the United Nations High Commissioner for Human Rights.”).

¹¹⁵ Written Statement of Israel, p. 1.

¹¹⁶ Written Statement of the Czech Republic, p. 1.

V. The General Assembly's Questions Are Capable of Being Answered as Presently Worded

1.43. As stated by **Luxembourg**, “les deux questions posées à la Cour sont formulées d’une manière suffisamment claire et précise”¹¹⁷.

1.44. Indeed, the questions put before the Court by the General Assembly clearly circumscribe the scope *ratione loci*, *temporis* and *materiae* of the Request for an Advisory Opinion¹¹⁸: they all involve possible violations of applicable rules of international law, namely denial of the right of the Palestinian people to self-determination; breaches of the United Nations Charter, international humanitarian law and human rights law (including the prohibition against racial discrimination and apartheid), and the prohibition of *de jure* and *de facto* annexation of foreign territory. The questions therefore enable the Court to provide an assessment on what the rules and principles of international law are that Israel has breached, and is continuing to violate, by the measures it has taken, and what the legal consequences of any such violation might be¹¹⁹. As such, they are sufficiently clear and precise for the Court to answer.

1.45. This is true for the General Assembly’s reference to Israel’s “prolonged” occupation and annexation of the Occupied Palestinian Territory, including East Jerusalem, which is the subject of Chapter 2 of these Written Comments. However, **France** suggests that the expression “prolonged occupation and annexation” may be “imprécise[.]” or “ambiguë[.]”¹²⁰ because its meaning “ne paraît pas, au regard du droit international pertinent, des plus évidents à cerner”¹²¹. France’s Statement goes on to explain that a “prolonged” occupation is not necessarily an illegal one, because it is an occupation’s permanence rather than its length, *per se*, which determines its legality¹²².

1.46. For Palestine, however, as set out in Chapter 2, the fact that an occupation has lasted for more than 56 years with no end in sight is indicative, even if not fully determinative, of its intended “permanence”¹²³. In any event, both

¹¹⁷ Written Statement of Luxembourg, para. 13 (unofficial translation: “the two questions posed to the Court are formulated in a sufficiently clear and precise manner”).

¹¹⁸ See. Written Statement of Egypt, paras. 51-58.

¹¹⁹ See, *mutatis mutandis*, *Wall* Opinion, pp. 153-154, paras. 38-39.

¹²⁰ Written Statement of France, para. 9.

¹²¹ *Ibid.*, para. 10 (unofficial translation: “does not appear, in the light of the relevant international law, to be very obvious”).

¹²² *Ibid.*, para. 51.

¹²³ See below, paras. 2.5-2.10.

Palestine and France agree that, independently of an occupation's length, the occupying power's annexation of occupied territory, and its settlement of that territory by the implantation of hundreds of thousands of its own nationals, along with declarations by its senior officials of never leaving the territory, are powerful indications of its intended "permanence", and therefore its illegality¹²⁴. The Court, therefore, should have no difficulty understanding the question posed to it, and providing an answer, without need for reformulation¹²⁵.

1.47. In sum, the Court is called upon to do no more than what it has often done in the past, namely, identify the existing principles and rules of international law, interpret and apply them to the situation prevailing on the ground, and reply to the General Assembly's legal questions on the basis of international law¹²⁶. In Palestine's view, and that of the overwhelming majority of States and international organizations, there is no need to reformulate these questions.

*

* *

1.48. All the aforementioned considerations confirm that in the present proceedings, just like in all previous advisory proceedings before this Court, there are no compelling reasons present which ought to lead the Court to decline to render its Opinion. Instead, the Court should fulfil its function of advising the General Assembly by answering the legal questions put to it, and thereby critically assisting it in furthering a peaceful solution in accordance with international law.

¹²⁴ Written Statement of France, para. 50.

¹²⁵ Some other States recalled the Court's power to reformulate questions that it considers ill-drafted. These include: Guatemala (see Written Statement of Guatemala, paras. 36-39, 44), Norway (see Written Statement of Norway, p. 2) and the Russian Federation (see Written Statement of the Russian Federation, para. 15 and Conclusion, sub-para. (4)). But, other than France, none pointed to any specific aspects of the questions that might require reformulation.

¹²⁶ See *Nuclear Weapons* Opinion, p. 234, para. 13.

Chapter 2.

THE PERMANENCE OF ISRAEL'S OCCUPATION OF THE OPT RENDERS IT ILLEGAL UNDER INTERNATIONAL LAW

2.1. The State of Palestine demonstrated in its first Written Statement that the Israeli occupation is illegal because, *inter alia*, it violates a number of peremptory norms of international law including acquisition of territory by the threat or use of force; denial of the Palestinian people their right of self-determination and imposing on them widespread racial discrimination and apartheid. This Chapter addresses Israel's violation of the first of these fundamental principles by its annexation and settlement of Palestinian territory, which make manifest its undisguised intention to permanently acquire the OPT.

2.2. In addition to the State of Palestine, 56 other States and international organizations submitted Written Statements in response to the Court's invitation of 3 February 2023. 13 of those Written Statements addressed only whether or in what manner the Court should answer the General Assembly's questions. Of the 35 submissions that addressed the lawfulness of Israel's prolonged occupation, annexation and settlement of the OPT, there was complete uniformity of views on a number of subjects, notably: that international law requires a belligerent occupation to be temporary, and does not recognize or permit a permanent occupation; and that that international law forbids the annexation of the occupied territory by the occupying power, as well as the settlement or implantation of the occupying power's own nationals in the occupied territory.

2.3. 32 States and international organizations submitted that Israel's prolonged occupation of the OPT is illegal because it is, or is intended to become, permanent. Only two States – Fiji, and the United States – argued that the Court should not declare the occupation illegal, but, as shown below, even the United States opposes Israel's settlements in the OPT as “unilateral actions” that “exacerbate tensions, hinder the prospect of a two-State solution, and drive [the parties] further from peace”¹²⁷; and Fiji expressly admits that Israel has annexed Jerusalem *de jure* and, in effect, concedes that Israel has annexed the rest of the West Bank *de facto*¹²⁸.

¹²⁷ Written Statement of the United States of America, para. 5.4.

¹²⁸ Written Statement of Fiji, p. 6.

2.4. The remainder of this Chapter consists of five sections: on the illegal character of permanent occupation in general, and of Israel's occupation of the OPT in particular (I); on Israel's illegal annexation of the OPT (II); on Israel's illegal settlement (or "colonization" as some States describe it) of Jerusalem and the West Bank (III); on Israel's illegal changes to the status and character and demography of Jerusalem (IV); on the inability of Israel to justify its actions on grounds of lawful "self-defense" or necessity (V); and on the legal consequences of Israel's illegal occupation, including the obligation to terminate it immediately, totally and unconditionally (VI).

I. The Illegality of Israel's Permanent Occupation

2.5. There is uniformity of views that a belligerent occupation must be temporary, and that, even where an occupation is lawful *ab initio*, it becomes unlawful when the occupying power takes steps to make it permanent. Many of the Written Statements submitted to the Court underscore the fact that an occupation is necessarily temporary, such that the annexation of occupied territory or other measures of a permanent character would render it illegal. **Switzerland's** submission captures this distinction as well as any:

“Les règles du droit de l'occupation reposent sur l'idée selon laquelle l'occupation n'est qu'une situation temporaire. Elles se fondent en effet sur quatre principes fondamentaux dont les deux premiers soulignent le caractère temporaire d'une occupation : 1) la Puissance occupante n'acquiert pas la souveraineté sur le territoire qu'elle occupe, ... 2) la Puissance occupante doit maintenir le *statu quo ante* et ne doit pas prendre de mesures qui pourraient entraîner des changements permanents, en particulier sur le plan social, économique et démographique, 3) la Puissance occupante doit maintenir la sécurité et l'ordre public dans le territoire occupé et administrer ce dernier de sorte à assurer la protection et le bien-être des personnes protégées, soit à protéger, respecter et réaliser leurs droits, 4) de manière générale, la Puissance occupante ne doit pas exercer ‘*son autorité aux fins de servir ses propres intérêts, ou dans le but d'utiliser les habitants, les ressources ou d'autres atouts du territoire qu'elle occupe au profit de son propre territoire ou de sa propre population*’.”¹²⁹

¹²⁹ Written Statement of Switzerland, para.44 (emphasis in the original) (unofficial translation: “The laws of occupation are built on the idea that occupation is only a temporary situation. They are based on four fundamental principles, the first two of which underscore the temporary nature of occupation: 1) the occupying power does not acquire sovereignty over the

2.6. Switzerland, whose expertise as depositary of the 1949 Geneva Conventions is notable in this respect, goes on to distinguish between the law of occupation (which forms part of the *jus in bello*) and the legality of an occupation (which falls under the *jus ad bellum*), and calls upon the Court to render an Opinion on the legality of Israel's occupation of the OPT under general international law, based on "les conséquences du caractère permanent des mesures prises par Israël dans le Territoire palestinien occupé":

“Le droit de l’occupation et la légalité de l’occupation sont deux questions distinctes. Le droit de l’occupation s’applique indépendamment de la question de la légalité de l’occupation. L’occupation est une situation qui est régie par le droit international humanitaire alors que la légalité de celle-ci est régie par la Charte des Nations Unies. Le caractère potentiellement illégal d’une occupation ne doit pas remettre en question la séparation fondamentale entre le *Ius ad bellum* et le *Ius in bello*. Le droit de l’occupation continue donc de s’appliquer dans le Territoire palestinien indépendamment de la question de la légalité de l’occupation. Dans ce cadre, il serait opportun que la Cour se prononce sur les conséquences du caractère permanent des mesures prises par Israël dans le Territoire palestinien occupé quant au statut de l’occupation au regard du droit international général, en particulier de la Charte des Nations Unies.”¹³⁰

territory it occupies ... 2) the Occupying Power must maintain the *status quo ante* and must not take any measures which might bring about permanent changes, particularly in the social, economic and demographic spheres, 3) the Occupying Power must maintain security and public order in the occupied territory and administer it in such a way as to ensure the protection and well-being of the protected persons, 4) in general, the Occupying Power must not exercise ‘its authority in order to further its own interests, or with a view to using the inhabitants, the resources, or other assets of the territory it occupies for the benefit of its own territory or population’.”).

¹³⁰ *Ibid.*, para. 51 (unofficial translation: “The law of occupation and the legality of occupation are two different questions. The law of occupation applies independently of the question of the legality of the occupation. Occupation is a situation subject to international humanitarian law, whereas its legality is governed by the United Nations Charter. The potentially illegal nature of an occupation does not call into question the fundamental separation between *jus ad bellum* and *jus in bello*. The law of occupation therefore continues to apply in the Palestinian Territory independently of the question of the legality of the occupation. In this context, it would be appropriate for the Court to rule on the consequences of the permanent character of the measures taken by Israel in the Occupied Palestinian Territory as to the status of the occupation under general international law, in particular the Charter of the United Nations.”).

2.7. For Switzerland:

“Les mesures prises par Israël dans le Territoire palestinien occupé entraînent des changements fondamentaux, notamment démographiques, pouvant endosser un caractère permanent.”¹³¹

2.8. As Switzerland points out, Israel’s measures of a permanent character have been identified and condemned by the United Nations:

“Les Nations Unies ont constamment réaffirmé le principe de l’inadmissibilité de l’acquisition de territoires par la force, et condamné les mesures israéliennes visant à modifier la composition démographique, le caractère et le statut de Jérusalem et du Territoire palestinien occupé dans son ensemble, notamment par la construction et l’extension de colonies, le transfert de colons israéliens, la confiscation de terres, la démolition d’habitations et le déplacement de civils palestiniens.”¹³²

2.9. **France** agrees that belligerent occupation must be temporary, quoting Pictet that “[I]’occupation de guerre ... est un état de fait essentiellement provisoire”¹³³, and going on to say, in relation to Israel’s prolonged occupation of Palestinian territory:

“Avec une occupation du territoire palestinien qui dure depuis 1967, ce caractère prolongé paraît difficilement pouvoir être justifié par les ‘nécessités de guerre’ En effet, si les restrictions permises par un régime d’occupation étaient justifiables dans la période suivant les opérations militaires, elles ne le sont plus aujourd’hui. Ces points ont d’ailleurs été rappelés par le Conseil de sécurité et l’Assemblée générale à de nombreuses

¹³¹ *Ibid.*, para. 48 (unofficial translation: “The measures taken by Israel in the Occupied Palestinian Territory lead to fundamental changes, particularly demographic changes, that can have a permanent character.”).

¹³² *Ibid.*, para. 46. (unofficial translation: “The United Nations has consistently reaffirmed the principle of the inadmissibility of the acquisition of territory by force, and condemned Israeli measures aimed at modifying the demographic composition, the character and the status of Jerusalem and the Occupied Palestinian Territory as a whole, notably by the construction and extension of colonies, the transfer of Israeli colonists, the confiscation of land, the demolition of homes and the displacement of Palestinian civilians.”).

¹³³ Written Statement of France, para. 49 (unofficial translation: “belligerent occupation ... is an essentially temporary situation”).

reprises concernant l'obligation pour Israël de se retirer des territoires 'occupés'.”¹³⁴

2.10. France points out that “[l]e caractère prolongé d’une occupation ... n’a pas pour conséquence de rendre celle-ci illicite *per se*”¹³⁵. For France, the illegality of an occupation is not a function of its length, in absolute terms, such that a “prolonged” occupation is not necessarily illegal; it is not the length of time in absolute terms that determines legality, but whether the occupation has acquired permanence. Addressing the transfer of part of Israel’s population to the OPT, the French submission emphasizes that:

“Ces implantations permanentes paraissent de toute évidence incompatibles avec le caractère nécessairement provisoire de l’occupation.”¹³⁶

2.11. Still less compatible with the temporary character of occupation is Israel’s annexation of Palestinian territory, since annexation of occupied territory is gravely unlawful:

“Le statut de puissance occupante ne confère rigoureusement aucun titre juridique justifiant une annexion. A cet égard, le fait que l’occupation soit d’une durée particulièrement longue ne saurait, en tout état de cause, permettre de légitimer des prétentions d’annexion. Le passage du temps ne suffit pas, en matière d’acquisition de territoires par la force, à rendre licite une situation gravement illicite.”¹³⁷

¹³⁴ *Ibid.* (footnotes omitted) (unofficial translation: “With the occupation of the Palestinian territory having lasted since 1967, this prolonged character hardly seems justifiable by the ‘necessities of war’ Indeed, if the restrictions authorised by a regime of occupation were justifiable in the period following the military operations, they are not anymore today. These points have been reiterated by the Security Council and the General Assembly on numerous occasions concerning Israel’s obligation to withdraw from the ‘occupied’ territories.”)

¹³⁵ *Ibid.*, para. 51 (unofficial translation: “the prolonged character of an occupation ... does not render it illegal *per se*”).

¹³⁶ *Ibid.*, para. 50 (unofficial translation: “These permanent establishments are obviously incompatible with the necessarily temporary character of the occupation.”).

¹³⁷ *Ibid.*, para. 58 (unofficial translation: “The status of occupying power does not confer any legal title justifying annexation. The fact that the occupation has been particularly long cannot, in any event, legitimise claims of annexation. The passage of time is not sufficient, as regards the acquisition of territory by force, to render lawful a situation that is gravely unlawful.”). A recent Legal Study, commissioned by the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People (UNCEIRPP) and researched and drafted by the Irish Centre for Human Rights at the National University of Galway (Ireland) on “The Legality of the Israeli Occupation of the Occupied Palestinian Territory, including East Jerusalem”, found, *inter alia*, that

2.12. France concludes, as discussed below, that Israel has, in fact, unlawfully annexed Palestinian territory, pointing especially to the “colonisation” of 10 % of the West Bank¹³⁸ and the “annexion *de facto* de la zone C”¹³⁹, which constitutes a large part of the West Bank, and concluding that “l’un des principes cardinaux du droit international est celui prohibant ce type d’annexion”¹⁴⁰.

2.13. France, like Switzerland, emphasizes that the illegality of an occupation does not excuse the occupying power from its obligations under *jus in bello*, which remain applicable to it¹⁴¹. As France explains, it would be “absurde ou déraisonnable ... de priver les populations civiles de la protection offerte par ce régime, protection d’autant plus nécessaire que ladite occupation dure dans le temps”¹⁴². The United States also agrees that “international humanitarian law continues to apply for however long the occupation exists in fact”¹⁴³.

2.14. The State of Palestine agrees, as well. Although it considers the Israeli occupation of Palestinian territory illegal under the United Nations Charter and general international law, it insists, along with France, Switzerland and the United States, that the occupying power remains bound by international humanitarian and human rights law – including Articles 47 and 49 of the Fourth Geneva Convention¹⁴⁴ – as long as the occupation continues, regardless of the legality of the occupation itself. In this regard, Article 3 (b) of Additional Protocol I to the Geneva Conventions establishes that the application of the Conventions and the

numerous international legal scholars have adopted the position that the occupying Power’s breach of core principles underpinning a belligerent occupation, including the prohibition of annexation, may indicate that the occupation has become illegal under *jus in bello*, i.e., “rendered illegal for breaching the normative order that generates the legal regime of occupation, among them principles of temporality, annexation, the inalienability of sovereignty, gross violations of human rights, and the breach of trust regarding self-determination” (Letter dated 20 September 2023 from the Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People addressed to the Secretary-General, Annex, 20 September 2023, A/78/378-S/2023/694, p. 21, <https://undocs.org/A/78/378>) (hereafter the “Legal Study”).

¹³⁸ Written Statement of France, para. 55.

¹³⁹ *Ibid.*, para. 56.

¹⁴⁰ *Ibid.*, para. 59 (unofficial translation: “one of the cardinal principles of international law is the prohibition of this type of annexation”).

¹⁴¹ See Written Statement of France, para. 51; and Written Statement of Switzerland, para. 49.

¹⁴² Written Statement of France, para. 51 (unofficial translation: “absurd or unreasonable ... to deprive the civilian population of the protection offered by this regime, a protection that is all the more necessary due to the prolonged occupation”).

¹⁴³ Written Statement of the United States of America, para. 4.3.

¹⁴⁴ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, United Nations, *Treaty Series* (UNTS), Vol. 75, p. 287 (entry into force: 21 October 1950) (hereinafter “Fourth Geneva Convention”).

Protocol shall cease, “in the case of occupied territories, on the termination of the occupation”¹⁴⁵.

2.15. Contrary to Switzerland, France and the State of Palestine – and to every other State and international organization that has addressed this issue – the United States alone considers that occupation is simply a matter of fact, not subject to a determination of its legality or illegality under the United Nations Charter or general international law¹⁴⁶. This is a distinctly minority view. As noted above, 32 States and international organizations (in addition to the State of Palestine) have submitted Written Statements characterizing Israel’s occupation of the OPT as illegal under the United Nations Charter and general international law, and that its violations of international humanitarian and human rights law are compounded by the fact that they are aimed at committing breaches of peremptory norms. The following statements, excerpted from these submissions, are emblematic of the near-unanimous views expressed by the international community.

(a) African Union:

“[T]he African Union invites the Court to conclude that the prolonged Israeli occupation of the Palestinian territories is, in itself, unlawful.

... UN organs have, on several occasions, affirmed that the Israeli occupation of the Palestinian territories is unlawful. Specifically, Israel’s occupation of those territories qualifies as an internationally wrongful act of a continuing character on the following grounds:

- a. *First*, the Israeli occupation of the Palestinian territories violates the right of the Palestinian people to self-determination;
- b. *Second*, Israel’s prolonged occupation of the Palestinian territories deprives the State of Palestine of its full sovereignty, further depriving the Palestinian people of their right to self-determination; and
- c. *Third*, the prolonged Israeli occupation and the policies and practices associated with it amount to the *de facto* and *de jure* annexation of the Palestinian territories, which violates the prohibition on the acquisition of territory by force.”¹⁴⁷

¹⁴⁵ Legal Study, 20 September 2023, A/78/378-S/2023/694, p. 18 (<https://undocs.org/A/78/378>).

¹⁴⁶ Written Statement of the United States of America, para. 4.2.

¹⁴⁷ Written Statement of the African Union, paras. 90-91.

(b) Brazil:

“More than 55 years have passed since the 1967 conflict, and thenceforth the occupying Power has adopted policies and practices such as the construction and expansion of settlements with permanent infrastructure, the construction of the wall, the demolition of Palestinian homes, the transfer of populations, the application of discriminatory legislation, which benefits the settlers, and legal assimilation. The cumulative effect of these measures would render the occupation unlawful as a whole, inasmuch as it would be tantamount to the acquisition of territory by force.”¹⁴⁸

(c) Chile:

“the occupation of Palestinian territory is illegal on the following grounds: (i) it has lasted for more than 56 years, and is perpetuated intentionally by Israel in order to continue its illegal settlement policy and practices; (ii) it is not justified as a measure necessary for Israel’s protection; (iii) the settlements policy evidences that occupation is aimed at the annexation of territory by Israel; (iv) Israel has violated its obligation to act in the best interests of the population under occupation.”¹⁴⁹

(d) China:

“Belligerent occupation shall not have the effect of annexation. Annexation is the acquisition of sovereignty over the territory of another State by unlawful means, such as threat or use of force. Under the framework of *jus ad bellum*, Article 2(4) of the Charter of the United Nations prohibits the threat or use of force to acquire territory and any acquisition of territory by the threat or use of force is illegal. ... It is hence unlawful for an occupying Power to overstep its temporary authority and to seize the sovereignty over the occupied territory in any manner or by any means that would have the effect of *de facto* or *de jure* annexation.

.....

China believes that it is necessary for the Court to further clarify whether the prolonged occupation by Israel of the Occupied Palestinian Territory and Israel’s relevant policies and practices have changed the character of

¹⁴⁸ Written Statement of Brazil, para. 46.

¹⁴⁹ Written Statement of Chile, para. 119.

the occupied territories, and whether they are consistent with the purposes of the belligerent occupation regime.”¹⁵⁰

(e) **Egypt:**

“For these reasons, a protracted occupation that is coupled with measures to permanently change the demographic characteristics of the occupied territory, and acquire territory in violation of the cardinal principle of the prohibition of the acquisition of territory by force, is illegal *per se* and amounts to *de facto* annexation. It follows that the Israeli occupation of Palestinian territory is unlawful under international law owing to its permanence and to actions undertaken by Israel to annex parts of the land *de facto* and *de jure*.”¹⁵¹

(f) **Indonesia:**

“Israel [has] consistently violated the principle of non-annexation of occupied territory.”¹⁵²

(g) **Japan:**

“Japan believes that the prohibition of threat or use of force under Article 2(4) of the United Nations Charter constitutes the most fundamental rule of the post-war regime for peace based on the rule of law among nations. As the ICJ clarified in the *Wall Advisory Opinion*, the illegality of the acquisition of territory by force is a corollary of the prohibition of use of force incorporated in the UN Charter and it reflects customary international law.”¹⁵³

(h) **Jordan:**

“Jordan’s position is that Israel’s unlawful policies and practices, when combined, are evidence of Israel’s intention to displace and replace the Palestinian people and to acquire the territory in question by force. It is clear

¹⁵⁰ Written Statement of China, paras. 23 and 29.

¹⁵¹ Written Statement of Egypt, para. 249.

¹⁵² Written Statement of Indonesia., para. 53.

¹⁵³ Written Statement of Japan, para. 9.

that this is the *raison d'être* of Israel's occupation; as such it is a flagrant violation of international law."¹⁵⁴

(i) **Norway:**

"Norway has consistently emphasized its principled stand that any acquisition of territory by force is inadmissible and constitutes a serious violation of international law."¹⁵⁵

(j) **South Africa:**

"The United Nations has recognised the peremptory norms violated by Israel in the Occupied Palestinian Territory, namely the prohibition on the acquisition of territory by means of force ...

.....

It is illegal for an occupying power to acquire occupied territory or to transform the status of the territory by creating irreversible facts on the ground so that the people of the territory would be precluded from eventually freely exercising their right [to] self-determination at the end of the occupation.

.....

Against this background it is submitted that the Court should find that the prolonged Israeli belligerent occupation of the Occupied Palestinian Territory, including East Jerusalem, is illegal and an insurmountable barrier to the achievement of Palestinian self-determination."¹⁵⁶

(k) **Spain:**

"Any practice conducive to *de jure* or [*sic*] *de facto* annexation of the Palestinian territories would render such an occupation illegal."¹⁵⁷

2.16. Other States that submitted statements characterizing as illegal the Israeli occupation as a whole include: Algeria, Bangladesh, Colombia, Cuba, Djibouti,

¹⁵⁴ Written Statement of Jordan, para. 5.4.

¹⁵⁵ Written Statement of Norway, p. 2.

¹⁵⁶ Written Statement of South Africa, paras. 152, 156 and 158.

¹⁵⁷ Written Statement of Spain, para. 8.2.

Gambia, Guyana, Kuwait, Lebanon, Maldives, Oman, Pakistan, Qatar, Senegal, Syria, Türkiye, the United Arab Emirates and Yemen.

2.17. As shown by these concurring statements, the argument that belligerent occupation is simply a matter of fact which is not capable of being characterized as legal or illegal is refuted not only by virtually every other State and international organization that has commented on this question, but also by the international community's condemnation of prior occupations as "illegal" or "unlawful". Examples are numerous, including the following:

- (a) In 1968, the General Assembly, in resolution 2372 (XXII), condemned South Africa's "illegal occupation" of Namibia¹⁵⁸. In the 1970s, the Security Council resolved that "the continued presence of the South African authorities in Namibia is illegal"¹⁵⁹.
- (b) In 1973, the General Assembly condemned Portugal for "perpetuating its illegal occupation of certain sectors of Guinea Bissau ..."¹⁶⁰.
- (c) In 1985, in resolution 577, the Security Council commended "the People's Republic of Angola for its steadfast support of the people of Namibia in their just and legitimate struggle against the illegal occupation"¹⁶¹.
- (d) In 1990, following Iraq's invasion of Kuwait with the stated intention of annexing it, the Security Council adopted resolution 674, which condemned the "illegal occupation" of Kuwait¹⁶².

2.18. Israel's occupation of Palestine itself has been repeatedly characterized as "illegal" by United Nations bodies¹⁶³.

¹⁵⁸ See General Assembly, Resolution 2372 (XXII), 12 June 1968, para. 9.

¹⁵⁹ See Security Council, Resolution 435 (1978), 29 September 1978, para. 2.

¹⁶⁰ See General Assembly, Resolution 3061 (XXVIII), 9 November 1973.

¹⁶¹ Security Council, Resolution 577 (1985), 6 December 1985.

¹⁶² Security Council, Resolution 674 (1990), 29 October 1990.

¹⁶³ Some examples include: General Assembly Resolution 32/20 of 25 November 1977, which in its preamble declared that "the Arab territories occupied since 1967 have continued, for more than ten years, to be under illegal Israeli occupation ..."; General Assembly Resolution 33/29 of 7 December 1978, which in its preamble reiterated that Palestinian and other Arab territories were under "illegal Israeli occupation". Similar language has appeared in numerous subsequent General Assembly resolutions (see for example General Assembly, Resolution 34/70, 6 December 1979; Resolution 35/122E, 11 December 1980; Resolution 35/207, 16 December 1980, and Resolution 36/147E, 16 December 1981). The United Nations Economic and Social Council (UNESOC) has also repeatedly referred to Israel's occupation of the OPT as "illegal" (see for example the following UNESOC Resolutions: "Situation of and assistance to Palestinian women",

2.19. As noted by the United Nations Independent International Commission of Inquiry:

“The occupation itself denies the Palestinian people their right to self-determination due to its permanence and actions amounting to annexation, including unilateral actions taken to dispose of parts of the Occupied Palestinian Territory as if Israel held sovereignty over it. It can be concluded that, when an occupation rests on a violation of a peremptory norm of *erga omnes* character, such as the right to self-determination, the occupation itself is unlawful.”¹⁶⁴

2.20. On 26 July 2023, the Office of the United Nations High Commissioner for Human Rights issued a statement by 31 United Nations human rights experts in response to recent measures that “solidified Israel’s annexation of occupied territory”:

“Annexation or acquisition of territory by use of force or threat, is categorically prohibited under international law ... Israel has persistently pursued annexation in many parts of the occupied Palestinian territory.”¹⁶⁵

2.21. The 31 human rights experts decried the lack of effective or concerted action by the international community to prevent of reverse Israel’s illegal annexation of the OPT:

“This show of *à la carte* enforcement of international law undermines the foundations of the UN Charter and the promise of universality of international rights”¹⁶⁶

E/RES/2010/6, 20 July 2010; “Situation of and assistance to Palestinian women”, E/RES/2011/18, 26 July 2011; UNESOC, “Situation of and assistance to Palestinian women” E/RES/2012/25, 14 September 2012; “Situation of and assistance to Palestinian women”, E/RES/2013/17, 9 October 2013; Situation of and assistance to Palestinian women”, E/RES/2014/1, 18 July 2014; “Situation of and assistance to Palestinian women”, E/RES/2015/13, 19 August 2015; “Situation of and assistance to Palestinian women”, E/RES/2016/4, 22 July 2016; “Situation of and assistance to Palestinian women”, E/RES/2017/10, 4 August 2017).

¹⁶⁴ United Nations Independent International Commission of Inquiry on the OPT, including East Jerusalem, and in Israel, Position paper on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, 26 September 2023, para. 18.

¹⁶⁵ “International community must act to end Israel’s annexation of occupied West Bank, including east Jerusalem, and defend international law: UN experts”, Office of the UN High Commissioner for Human Rights, 26 July 2023 (<https://tinyurl.com/3fduyp9z>).

¹⁶⁶ *Ibid.*

“Justice must be served, and international law must be upheld without double standards to end this cycle of violence and secure a just and lasting peace for both Palestinians and Israelis”¹⁶⁷

2.22. Meanwhile, Israel has not only continued to implant settlers in Palestinian territory to advance its annexationist objectives; it has accelerated the pace. For example, on 19 August 2023, just shy of one month following the submission of Written Statements in these proceedings, Israel’s Minister of Finance, Bezalel Smotrich, who is also the Minister in charge of civil administration of the OPT, asked the Cabinet to approve a US\$ 180 million plan to expand existing settlements and outposts.¹⁶⁸

2.23. The following day, Minister Smotrich publicly called for Israel to “go on the offensive in Judea and Samaria ... while we work to intensify construction and strengthening of settlements in the area”¹⁶⁹. On 23 August 2023, the head of the West Bank Settlements Regional Council presented a plan to Prime Minister Netanyahu calling for an increase in the number of settlers in the northern part of the West Bank from 170,000 (the current figure) to 1,000,000 by 2050.¹⁷⁰ On 27 August 2023, the Israeli government decided to allocate more Palestinian land in the West Bank to the Amichai and Mevo’ot Jericho settlements, between Ramallah in the west and Jericho in the east.¹⁷¹ On 31 August 2023, the United Nations Office for Coordination of Humanitarian Affairs (UNOCHA) reported that there were almost no Palestinians remaining in the vast area between these Palestinian cities, because many of the Palestinian communities in this area were forcibly displaced as a result of intensifying violence and land seizures by Israeli settlers backed by Israel’s occupation forces; hundreds of Palestinians have been forcibly displaced in this way. Only three Palestinian communities are now left in this area– Ein al-Rashash, Jabit and Ras Ein al-Auja – and they remain vulnerable

¹⁶⁷ *Ibid.*

¹⁶⁸ “Report: Smotrich to ask cabinet to approve \$180m plan to expand settlements”, *The Times of Israel*, 18 August 2023 (<https://tinyurl.com/yuh4x2mx>).

¹⁶⁹ “Smotrich: ‘IDF must go on the offensive in Judea and Samaria’”, *The Times of Israel*, 19 August 2023 (<https://tinyurl.com/5n89zr6w>).

¹⁷⁰ “Settlers aim for 1 million Israelis living in West Bank's Samaria by 2050”, *The Jerusalem Post*, 23 August 2023 (<https://tinyurl.com/bdd7c27j>).

¹⁷¹ “Another Annexation Development: Government Allocates New Lands to Settlements and Formalizes Allocation Process through the Settlement Division”, *Peace Now*, 27 August 2023, (<https://tinyurl.com/2pb2wnr5>).

to the same government-backed settler harassment that has forced their neighbours to flee¹⁷².

II. Israel's Illegal Acquisition of Palestinian Territory by Use or Threat of Force

2.24. The State of Palestine demonstrated in Chapter 3 of its Written Statement of 24 July 2023 that Israel has illegally annexed East Jerusalem and the rest of the West Bank in violation of the peremptory norm that prohibits the acquisition of territory by use or threat of force reflected in Article 2(4) of the United Nations Charter, the Friendly Relations Declaration, a series of Security Council resolutions commencing with resolution 242 (1967) and numerous General Assembly resolutions. 28 States and international organizations, in addition to the State of Palestine, addressed this issue in their Written Statements submitted to the Court in July 2023. Of them, 27 shared the State of Palestine's view that Israel's annexation of Palestinian territory violates this peremptory norm of international law and is both illegal and inadmissible. Only one State – Fiji – disagreed. But even Fiji acknowledged that Israel has annexed East Jerusalem, and that the application by an occupying power of its domestic laws to the occupied territory – which Israel indisputably has done – “would amount to *de facto* annexation”¹⁷³.

2.25. The following States and international organizations have asserted, as has the State of Palestine, that Israel has breached its obligations under general international law, including the United Nations Charter, by annexing Palestinian territory: African Union, Bangladesh, Brazil, Chile, Djibouti, Egypt, France, Guyana, Indonesia, Ireland, Jordan, Kuwait, League of Arab States, Malaysia, Maldives, Mauritius, Namibia, Norway, Oman, Pakistan, Qatar, South Africa, Spain, Switzerland, Syria, Türkiye and Yemen. Some examples of those statements include:

(a) **Brazil:**

“The inadmissibility of the acquisition of territory by force is a well-established principle of international law. ... Annexation of territory does not depend on a formal declaration from one state over a territory under its control. In the Wall proceedings, the Court considered that ‘the construction of the wall and its associated régime create a “fait accompli” on the ground that could well become permanent, in which case, and notwithstanding the

¹⁷² “‘It’s like 1948’: Israel cleanses vast West Bank region of nearly all Palestinians”, +973 Magazine, 31 August 2023 (<https://tinyurl.com/3rfkhay7>).

¹⁷³ Written Statement of Fiji, p. 6.

formal characterization of the wall by Israel, it would be tantamount to de facto annexation'. Almost twenty years since the Court opinion, the situation in the terrain, unfortunately, confirms this presage."¹⁷⁴

(b) Djibouti:

“En vertu de l’effet d’annexion qu’elle produit, la politique israélienne d’occupation et de colonisation viole le principe de non-acquisition de territoire par la force qui découle de l’article 2(4) de la charte de l’ONU et qui constitue un principe cardinal des relations internationales de l’après Seconde guerre mondiale.”¹⁷⁵

(c) France:

“Le statut de puissance occupante ne confère rigoureusement aucun titre juridique justifiant une annexion. ...

Bien au contraire, l’un des principes cardinaux du droit international est celui prohibant ce type d’annexion. Comme cela ressort notamment de la résolution 2625 (XXV), ‘[n]ulle acquisition territoriale obtenue par la menace ou l’emploi de la force ne sera reconnue comme légale’.”¹⁷⁶

(d) Guyana:

“The prohibition on annexation of territory is a *jus cogens* norm of universal application and a fundamental cornerstone of the international legal order.

.....

The evidence clearly establishes that, through the acts it has committed during the course of that prolonged occupation, Israel has annexed East Jerusalem and the West Bank.

.....

¹⁷⁴ Written Statement of Brazil, paras. 43-44.

¹⁷⁵ Written Statement of Djibouti, para. 17 (unofficial translation: “By virtue of the effect of annexation that it produces, Israel’s policy of occupation and colonization violates the principle of non-acquisition of territory by force, which derives from Article 2 (4) of the United Nations Charter and is a cardinal principle of post-Second World War international relations.”).

¹⁷⁶ Written Statement of France, paras. 58-59 (“The status of occupying power does not confer any legal title justifying annexation. ... On the contrary, one of the cardinal principles of international law prohibits this type of annexation. As stated in particular in resolution 2625 (XXV), ‘[n]o territorial acquisition resulting from the threat or use of force shall be recognized u legal.’”).

Israel's leaders have made innumerable statements declaring that East Jerusalem and West Bank are part of Israel's sovereign territory".¹⁷⁷

(e) **Ireland:**

"Ireland has concluded that Israel's settlement-related policies and practices in the Occupied Palestinian Territory are wholly inconsistent with the temporary administration of territory in accordance with the law of military occupation. In summary:

- Israel has used different means to take and exercise control for non-military purposes over as much land in the Occupied Palestinian Territory as possible;
- Having taken such control, Israel has undertaken permanent construction on this land, in particular developing or encouraging the development of settlements and their related infrastructure;
- Israel has transferred large numbers of its own citizens into the Occupied Palestinian Territory, accommodating them in these permanent settlements;
- Israel has encouraged and incentivised Israeli population growth in the settlements, effecting an increasingly profound demographic change in the Occupied Palestinian Territory";
- Israel has extended the application of domestic Israeli law to those living in settlements, blurring the distinction between Israel and the Occupied Palestinian Territory;
- Israel has transferred the exercise of authority in the Occupied Palestinian Territory in certain areas from military command to Government Ministries and civilian agencies, integrating administration of the Territory into that of Israel.

.....

Despite the Court finding [in the *Wall* Opinion] that the construction of the wall was contrary to international law and that Israel had an obligation to cease building it and to dismantle those parts already completed, building it continued after the Court delivered its Opinion. Today the wall remains unfinished but maintenance and new construction continues on an ongoing basis. Ireland's assessment is that the situation envisaged by the Court has,

¹⁷⁷ Written Statement of Guyana, paras. 4, 13, 18-19.

therefore, come to pass through the evident permanence of the wall almost two decades later: the wall and its associated regime have created a situation of *de facto* annexation over those parts of the Occupied Palestinian Territory that lie between the wall and Israel.”¹⁷⁸

(f) Maldives:

“Since the handing down of its Advisory Opinion in 2004, the scenario which the Court anticipated of the creation of a ‘permanent’ situation tantamount to a *de facto* annexation has become a reality.”¹⁷⁹

(g) Saudi Arabia:

“[Israel is] in violation of Article 2.4 of the U.N. Charter and customary international law prohibiting the acquisition of territory through the use of force.

.....

The *de facto* annexation of the Occupied Palestinian Territory continues ... to be Israel’s *modus operandi* in clear violation of the *jus cogens* norm prohibiting the acquisition of territory through the use of force.”¹⁸⁰

(h) South Africa:

“[T]he annexation of occupied territory is illegal under international law. The illegal nature of Israel’s adoption of annexation policies/legislation are also recognised in a number of United Nations reports and resolutions.”¹⁸¹

(i) Yemen:

“The Israeli occupation unlawfully colonized and attempted to annex as much territory for the exclusive benefit of its Jewish Israeli settlers.

.....

¹⁷⁸ Written Statement of Ireland, paras. 35 and 37.

¹⁷⁹ Written Statement of Maldives, para. 22.

¹⁸⁰ Written Statement of Saudi Arabia, paras. 36 and 55 (emphasis added).

¹⁸¹ Written Statement of South Africa., para. 123.

As part of this process, the Israeli occupation has undertaken a series of legislative and administrative measures to annex, both *de jure* and *de facto*, the West Bank, including East Jerusalem.”¹⁸²

2.26. In sum, the overwhelming majority of States and international organizations agree that Israel’s annexation of East Jerusalem and the rest of the West Bank constitutes an illegal acquisition of territory by force, which establish the intended permanent character of the Israeli occupation of the OPT and render it fundamentally illegal as a matter of international law.

III. Israel’s Illegal Settlement of East Jerusalem and the Rest of the West Bank to Advance Its Annexationist Objectives

2.27. The State of Palestine demonstrated in its first Written Statement that Israel has implanted more than 230,000 Israeli Jewish settlers in East Jerusalem, and more than 460,000 in the rest of the West Bank, in more than 270 officially-sanctioned settlements and settlement outposts to establish permanent facts on the ground in support of its effort to annex and claim sovereignty over the West Bank (which Israel refers to in its legislation and public declarations as “Judea and Samaria”). In fact, as the State of Palestine showed in Chapter 3 of its first Written Statement¹⁸³, a succession of Israeli Prime Ministers and Cabinet Ministers have publicly declared that these settlements are permanent and will never be removed, and the present Israeli government has openly committed itself to asserting Israeli sovereignty over the West Bank, while already claiming sovereignty over Jerusalem.

2.28. In addition to the State of Palestine, 46 other States and international organizations addressed the illegal Israeli settlements in their Written Statements. Almost all of them agreed with the State of Palestine that the settlements are illegal. The **United States**, for its part, identified the “advancement of settlements” and the “demolition of homes” as actions “that do nothing but exacerbate tensions, hinder the prospect of a two-State solution and drive [Israel and the State of Palestine] further from peace”, and which, therefore, must “cease”¹⁸⁴.

2.29. Other States were more direct in condemning Israel’s settlement policies and practices as illegal, and as the driving force behind its illegal annexation of Palestinian territory. **France**, for example, pointed out that the Court, in its 2004

¹⁸² Written Statement of Yemen, paras. 23 and 25.

¹⁸³ Written Statement of the State of Palestine, paras. 3.96, 3.179-3.193.

¹⁸⁴ Written Statement of the United States of America, para. 5.4.

Advisory Opinion in the *Wall* case, “avait conclu que ‘les colonies de peuplement installées par Israël dans le territoire palestinien occupé (y compris Jérusalem-Est) l’ont été en méconnaissance du droit international”¹⁸⁵. France continues:

“Ce constat d’illicéité demeure aujourd’hui d’autant plus fondé que, depuis 2004, Israël a poursuivi et accentué sa politique d’implantation de colonies en territoire palestinien occupé, en violation de ses obligations au regard du droit international. La France réitère sa condamnation de la politique de colonisation mise en œuvre par Israël.”¹⁸⁶

2.30. Other Written Statements that addressed this subject include the following:

(a) **Chile:**

“The Israeli Government has pursued a policy of establishing settlements in the OPT and *de facto* annexation for decades, and has been operating in full knowledge of the illegality of its settlements, and the international obligations that compel it.”¹⁸⁷

(b) **Ireland:**

“The unlawfulness of Israeli settlements in the Occupied Palestinian Territory is well established, including by the Court in the *Wall* case. ...

... [S]ettlements are the defining feature of Israel’s presence in the Occupied Palestinian Territory. Along with their associated infrastructure and activities, they contribute significantly to the breaches of international humanitarian and human rights law outlined above. ...

Israeli settlement construction in the Occupied Palestinian Territory has taken place under every Government of Israel since 1967 ... By 2013, Israel had used different methods to ‘seize’ approximately half of the West Bank for settlement use.

¹⁸⁵ Written Statement of France, para. 53 (unofficial translation: “had concluded that ‘the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law’.”).

¹⁸⁶ *Ibid.*, para. 54 (unofficial translation: “This conclusion of illegality remains all the more well-founded today given that, since 2004, Israel has pursued and accentuated its policy of establishing settlements in the occupied Palestinian territory, in violation of its obligations under international law. France reiterates its condemnation of the settlement policy implemented by Israel.”).

¹⁸⁷ Written Statement of Chile, para. 93.

.....

The reports of the Secretary General and of the High Commissioner [for Human Rights] indicate that once Israeli authorities control land in the Occupied Palestinian Territory and decide to construct settlements or ancillary infrastructure on it, this is done in a manner strongly indicative of permanence. This is evidenced by the significant financial investment by the Israeli Government in infrastructure, including connections to water, sewerage, communications and power infrastructure, and the establishment of security, health and education systems. ...

The number of persons living in settlements in the Occupied Palestinian Territory has grown steadily, at a faster rate than the Israeli population as a whole. A population increased from 520,000 settlers in 2012 had increased to almost 700,000 by 2022, an increase of more than one third. Media reports indicate that the Israeli Minister for Finance presented plans in May 2023 to increase settler numbers by a further 500,000 by 2030.”¹⁸⁸

(c) **Jordan:**

“The Israeli policy of settlements is ... contrary to the prohibition of acquisition of territory by force.”¹⁸⁹

(d) **Morocco:**

“[L]e consensus de la communauté internationale est entier sur le statut juridique des colonies israéliennes”¹⁹⁰

(e) **Norway:**

“Norway has consistently supported and referred to the relevant resolutions of the Security Council, including most recently resolution 2334 (2016), which reaffirms that Israeli settlements in the Palestinian territory occupied since 1967 constitute a flagrant violation under international law, and

¹⁸⁸ Written Statement of Ireland, paras. 17-19, 23 and 25.

¹⁸⁹ Written Statement of Jordan., para. 4.76.

¹⁹⁰ Written Statement of Morocco, p. 3 (unofficial translation provided by Morocco: “There is a consensus of the international community on the legal status of the Israeli settlements in parts of the Occupied Palestinian Territory”).

demands an immediate and complete cessation of all settlement activities.”¹⁹¹

(f) Spain:

“[The European Union and its Member States] have repeatedly rejected expansion of Israeli settlements on the Palestinian occupied territories and particularly all recent measures aiming at an accelerated expansion thereof, and considered them as contrary to international law ...

The EU has consistently rejected the continued settlement expansion and all measures that may be tantamount to a *de jure* or *de facto* annexation of the Palestinian territories.”¹⁹²

(g) Switzerland:

“Le régime de planification et de zonage est contraire à plusieurs dispositions du droit international humanitaire. Il contribue au surplus à l’expansion des colonies israéliennes et à créer un environnement coercitif qui peut, dans certains cas, s’apparenter à un transfert forcé ...

Les mesures prises par Israël dans le Territoire palestinien occupé entraînent des changements fondamentaux, notamment démographiques, pouvant endosser un caractère permanent. Elles affectent négativement la population palestinienne au lieu de lui être bénéfiques et contribuent à la création d’un environnement coercitif et vont donc à l’encontre des principes du droit de l’occupation.”¹⁹³

(h) United Arab Emirates:

“The UAE shares the concerns expressed by the Security Council, and has consistently condemned Israel’s continued construction, expansion and attempts to legalise Israeli settlements in the OPT. In this regard, the UAE

¹⁹¹ Written Statement of Norway, pp. 2-3.

¹⁹² Written Statement of Spain, paras. 5.1 and 5.2.

¹⁹³ Written Statement of Switzerland, paras. 47-48 (unofficial translation: “The planning and zoning regime violates several provisions of international humanitarian law. It contributes to the expansion of Israeli settlements and the creation of a coercive environment which can amount, in certain cases, to forced transfer ... The measures taken by Israel in the Occupied Palestinian Territory lead to fundamental changes, particularly demographic changes, that can have a permanent character. They adversely affect the Palestinian population rather than benefiting it, and contribute to the creation of a coercive environment, and therefore violate the principles of the law of occupation.”).

has highlighted the unlawful nature of those settlements under international law, and has called on Israel to immediately cease all its settlement activities and to reverse the negative trends on the ground. The UAE has also affirmed its rejection of any steps taken by Israel having as their aim the annexation of Palestinian territory.”¹⁹⁴

2.31. Other States and international organizations that have submitted Written Statements in which they declared Israel’s settlements in East Jerusalem and the West Bank illegal include: Algeria, the African Union, Bangladesh, Belize, Bolivia, Brazil, China, Colombia, Cuba, Djibouti, Egypt, the Gambia, Guyana, Indonesia, Kuwait, the League of Arab States, Lebanon, Malaysia, Mauritius, Morocco, Namibia, Oman, the Organisation of Islamic Cooperation, Pakistan, Qatar, Saudi Arabia, Senegal, South Africa, Syria, Türkiye and Yemen.

2.32. Not a single State or international organization has attempted to defend or justify Israel’s extensive settlement of East Jerusalem and the rest of the West Bank with over 750,000 of its own nationals. In contrast, every Written Statement that has addressed this issue has condemned Israel’s settlement enterprise as unlawful in itself, and as evidence of Israel’s intention to make its illegal annexation of Palestinian territory permanent, thus rendering the entire occupation of the OPT unlawful.

IV. Israel’s Illegal Changes to the Status, Character and Demography of the Holy City of Jerusalem

2.33. In Chapter 3, Part A, of its first Written Statement, the State of Palestine demonstrated that Israel has acted illegally to change the status, character and demography of Jerusalem, by annexing it and by displacing and replacing the Palestinian people in an attempt to erase the Palestinian people’s historic, political, cultural, and religious ties to the Holy City. Twenty-seven States and international organizations submitted Written Statements in which they agreed with the State of Palestine, declaring that Israel’s actions concerning Jerusalem were contrary to international law, including applicable resolutions of the Security Council. Some examples follow:

(a) African Union:

“Israel’s policies and practices reflect an intent to alter the demographic composition and character of occupied East Jerusalem, in order to further

¹⁹⁴ Written Statement of the United Arab Emirates, para. 58.

consolidate its control of the city and entrench its unlawful *de jure* annexation.”¹⁹⁵

(b) China:

“China notes that the Security Council has determined that Israel’s claim to Jerusalem as its capital, by changing the character and status of Jerusalem through domestic legislation, is null and void [citing resolution 298 (1971)]”.¹⁹⁶

(c) Jordan:

“The most obvious and far-reaching violation of international law by Israel in relation to Jerusalem is its attempt to annex the Holy City by adopting the 1980 Basic Law ...

.....

[O]ver the years, Israel has engaged in, *inter alia*, the establishment of settlements in the Holy City, the demolition of Palestinian homes and other infrastructure, and the displacement of Palestinians from Jerusalem, in violation of the rules of international humanitarian law ...

Israel has sought to expand the limits of Jerusalem, notably by making changes to its municipal boundaries. This flatly contradicts Israel’s obligation to respect the special regime applicable to Jerusalem and to maintain the *status quo*, in accordance with relevant resolutions adopted by competent organs of the United Nations ...

Israel has prevented access to the Holy Places in East Jerusalem, contrary to its obligations under international law.”¹⁹⁷

(d) Russian Federation:

“[Israel] encourages further Judaization of East Jerusalem and a change of the status quo of the Holy Places, in particular the Al Aqsa mosque.”¹⁹⁸

¹⁹⁵ Written Statement of the African Union, para. 174.

¹⁹⁶ Written Statement of China, para. 27.

¹⁹⁷ Written Statement of Jordan, paras. 4-87 and 4.92-4.94.

¹⁹⁸ Written Statement of Russian Federation, para. 9.

(e) Saudi Arabia:

“Israel has taken significant steps with respect to Jerusalem that serve to alter the demographic composition, character and status of the Holy City. For instance, Israel has revoked residence permits of and evicted Palestinian residents from the City of Jerusalem and allowed the building of settlements around and encircling the boundaries of Jerusalem, thereby severing ‘the geographical contiguity between East Jerusalem and the rest of the occupied West Bank.’ Israel has likewise introduced restrictive planning and zoning regimes in East Jerusalem that obstruct adequate housing infrastructure and contribute to ‘shrinking space for Palestinians’.

.....

[Israel is] continuing to alter the demographic composition, character and status of the Holy City of Jerusalem, Israel's actions in respect of Jerusalem violate various U.N. Security Council Resolutions, including Resolutions 252 (1968), 476 (1980) and 478 (1980).”¹⁹⁹

(f) Türkiye:

“Türkiye is deeply concerned by the unilateral policies and practices of Israel which violate the historical status quo in Haram Al-Sharif, and attempt or set a precedent to divide it temporally and spatially.”²⁰⁰

2.34. Other States and international organizations that have condemned as illegal Israel’s efforts to change the status, character or demography of Jerusalem include: Algeria, Belize, Bolivia, Brazil, Cuba, Djibouti, Egypt, France, Guyana, Lebanon, Qatar, Indonesia, Kuwait, Maldives, the Organisation of Islamic Cooperation, Senegal, South Africa, Switzerland, Syria and Yemen.

2.35. With one exception (Fiji), not a single Written Statement attempts to defend or justify Israel’s changes to the demographic composition, character or legal status of Jerusalem. Every other State or international organization to address these issues has condemned Israel’s practices in and concerning Jerusalem and found them to be in violation of Security Council resolutions and international law.

¹⁹⁹ Written Statement of Saudi Arabia, paras. 62 and 65.

²⁰⁰ Written Statement of Türkiye, p. 7.

V. Israel’s Occupation, Annexation and Settlement of the OPT, and Changes to the Status, Character and Demography of Jerusalem, Cannot Be Justified as Lawful “Self-Defence”

2.36. Of the 57 States and international organizations which submitted Written Statements in July 2023, 16 of them addressed whether Israel’s 56-year occupation of the OPT, including East Jerusalem, could be justified on grounds of self-defence. Tellingly, all of them concluded emphatically that it could not be. The State of Palestine did not address this matter in its Written Statement, so obvious is this answer. There are at least six reasons for this.

2.37. *First*, as demonstrated in the State of Palestine’s Written Statement²⁰¹, Israel’s occupation of the OPT violates at least three peremptory norms of international law from which no derogation is permitted: the prohibition on acquisition of territory by threat or use of force; the obligation to respect a people’s right of self-determination; and the prohibition of systematic racial discrimination and apartheid. This point is highlighted in the Written Statements of at least five States:

(a) Brazil:

“Brazil recognizes Israel’s legitimate security concerns and its inherent right to self-defense. As stressed in its Written Statement in the Wall proceedings, Brazil acknowledges that Israel has the right to protect its people from terrorist attacks. However, all measures Israel take for its own defense must be in accordance with international law. In this context, Brazil points out that no consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for annexation by force.”²⁰²

(b) Cuba:

“The prohibition to acquire territories by threat or the use of force ... is applicable whether or not the territory is acquired as a result of an act of aggression or self-defense.”²⁰³

²⁰¹ Written Statement of the State of Palestine, paras. 2.14-2.65; chapters 3, 4, 5 and 6.

²⁰² Written Statement of Brazil, para. 45.

²⁰³ Written Statement of Cuba, p. 4.

(c) Gambia:

“Israel also cannot possibly justify its *settlements upon* and *annexation of* occupied territory as a necessary response to any perceived threat. The ‘*absolute rule* against the acquisition of territory by force makes no distinction as to whether the territory was occupied through a war of self-defence or a war of aggression; annexation is prohibited in both circumstances’. By settling and annexing occupied territory, Israel has *ipso facto* acted unnecessarily in using force.”²⁰⁴

(d) Ireland:

“Ireland regrets to conclude that Israel’s settlement practices amount to an attempt to transform a temporary, albeit prolonged, occupation into an exercise in permanently acquiring territory by a gradual process of annexation.

In Ireland’s view, there can be no possible legal justification for this. Even if Israel were facing an armed attack entitling it to exercise the right of self-defence, its settlement activity could not be justified as self-defence. As explained above, Ireland has reluctantly but unavoidably concluded that that activity amounts to a process of annexation and a serious breach of the right to self-determination – a peremptory norm of general international law – which cannot be justified as self-defence.”²⁰⁵

(e) South Africa:

“[I]t is clear that an act of acquisition of territory by threat or use of force makes no distinction as to whether the territory was occupied through a war of self-defence or an act of aggression; what is important is that annexation is prohibited in both circumstances.”²⁰⁶

2.38. *Second*, the Court itself ruled in 2004 that Israel cannot rely on “self-defence” to justify its internationally wrongful acts.²⁰⁷

2.39. *Third*, for the State of Palestine, and for a number of other States and international organizations, Israel’s occupation of the OPT, including East Jerusalem, has been illegal *ab initio*, that is, since the June 1967 war, in which Israel

²⁰⁴ Written Statement of the Gambia, para. 1.29.

²⁰⁵ Written Statement of Ireland, paras. 44-45.

²⁰⁶ Written Statement of South Africa, para. 126.

²⁰⁷ *Wall* Opinion, p. 194, para. 139.

launched an aggressive war against Jordan, Egypt, Syria and Palestine rather than undertaking an act of self-defence in response to an armed attack by another State. For this reason, the Security Council did not hesitate, in resolution 242 of 22 November 1967, to emphasize the inadmissibility of acquisition of territory by war, and to instruct Israel to withdraw its armed forces from the territories occupied in the June hostilities. As of these Written Comments, in October 2023, more than 56 years have passed since Israel's occupation of the OPT, including East Jerusalem. There is no legal basis whatsoever for invoking "self-defence" as a justification for this prolonged occupation, and there has been none for at least the last half century.

2.40. *Fourth*, the right of self-defence only applies in the context of armed attacks which are imputable to a foreign State. In the *Wall* Opinion, the Court explained that:

"Article 51 of the Charter ... recognizes the existence of an inherent right of self-defence in the case of an armed attack by one State against another State. However, Israel does not claim that the attacks against it are imputable to a foreign State."²⁰⁸

2.41. Nor could Israel make a such a claim now. There is no armed attack against it by the State of Palestine.

2.42. *Fifth*, and in any event, Israel cannot justify its prolonged occupation of Palestinian territory as self-defence against an alleged threat which emanates from territory under its own occupation and control. In the *Wall* Opinion, the Court stated:

"The Court also notes that Israel exercises control in the Occupied Palestinian Territory and that, as Israel itself states, the threat which it regards as justifying the construction of the wall originates within, and not outside, that territory. The situation is thus different from that contemplated by Security Council resolutions 1368 (2001) and 1373 (2001), and therefore Israel could not in any event invoke those resolutions in support of its claim to be exercising a right of self-defence.

Consequently, the Court concludes that Article 51 of the Charter has no relevance in this case."²⁰⁹

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*

2.43. Israel does not suggest that its occupation of, and its actions within, the OPT are justified today based on a threat emanating from *outside* that territory, any more than it suggested this in 2003-2004. Instead, Israel's Written Statement of 24 July 2023 cites alleged threats arising *within* the OPT, including Gaza, including acts of violence against its settlers and other citizens, some of which it claims to be "official[ly]" inspired²¹⁰. Plainly, the actions of which Israel complains originate entirely within the territory that it occupies and controls. Accordingly, the reasons the Court gave for concluding that the right to self-defence under Article 51 of the Charter had "no relevance" to the issues before it in the *Wall* Opinion are equally applicable now.

2.44. *Sixth* (and again in any event), as the Court explained in the *Armed Activities* case: "Article 51 of the Charter may justify a use of force in self-defence only within the strict confines there laid down. It does not allow the use of force by a State to protect perceived security interests beyond these parameters."²¹¹

2.45. The "parameters" referred to by the Court include the requirements of necessity and proportionality. In *Military and Paramilitary Activities*, for example, the Court invoked the "specific rule whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law"²¹². In the *Nuclear Weapons* advisory opinion, the Court confirmed that: "This dual condition applies equally to Article 51 of the Charter, whatever the means of force employed."²¹³ The Court went on to explain that: "a use of force that is proportionate under the law of self-defence must, in order to be lawful, also meet the requirements of the law applicable in armed conflict which comprise in particular the principles and rules of humanitarian law"²¹⁴.

2.46. The principle that lawful self-defence must meet the tests of necessity and proportionality was underscored in the Written Statements of those States and international organizations that addressed the self-defence issue; some explained that when self-defence is invoked to justify a "prolonged" occupation the tests are more rigorous. Examples include:

²¹⁰ Written Statement of Israel, p. 2.

²¹¹ *Armed Activities in the Territory of the Congo, Judgment, I.C.J. Reports 2005*, pp. 223-224, para. 148.

²¹² *Military and Paramilitary Activities in and against, Merits, Judgment, I.C.J. Reports 1986*, p. 94, para. 176.

²¹³ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 245, para. 41.

²¹⁴ *Ibid.*, para. 42.

(a) Pakistan:

“To the extent that the legality of the occupation is claimed on notions of self-defence, it must still respect the customary international law principles of necessity and proportionality.”²¹⁵

(b) Spain:

“Any examination of necessity and proportionality in circumstances of prolonged occupation when hostilities have ceased must be more rigorous since stricter conditions govern the imposition of restrictions on the fundamental rights of protected persons.”²¹⁶

(c) Switzerland:

“L’examen de la nécessité et de la proportionnalité pour ce qui est de la restriction des droits de la personne dans une situation d’occupation prolongée doit être plus rigoureux, car les conditions permettant de restreindre les droits fondamentaux des personnes protégées sont plus strictes en vertu du droit international des droits de l’homme.”²¹⁷

2.47. In the State of Palestine’s view, which, as shown below, is shared by the States and international organizations that have addressed this issue in their Written Statements, an occupying power’s violations of peremptory and non-derogable rules of international law – which prohibit the acquisition of territory by force, the denial of the right of self-determination, and systematic racial discrimination and apartheid – can hardly be justified as “necessary” or “proportionate”. Nor can the occupying power’s blatant and persistent violations of international humanitarian law or human rights law. As the State of Palestine demonstrated in its first Written Statement, Israel’s occupation of the OPT, including East Jerusalem, is not only characterized by but *founded and dependent upon* all these violations²¹⁸. Its *raison d’être* is not security but acquisition of territory by force, as 56-years of occupation make abundantly clear.

²¹⁵ Written Statement of Pakistan, para. 33.

²¹⁶ Written Statement of Spain, para. 2.1.

²¹⁷ Written Statement of Switzerland, para. 43 (unofficial translation: “The examination of necessity and proportionality with regard to the restriction of human rights in a situation of prolonged occupation must be more rigorous, as the conditions for restricting the fundamental rights of protected persons are stricter under international human rights law.”).

²¹⁸ See Written Statement of the State of Palestine, Chapters 3 and 6.

2.48. Every State to have addressed this issue in its Written Statement agreed that Israel’s prolonged occupation, annexation and settlement of the OPT, including East Jerusalem, cannot be justified as necessary or proportionate. For example:

(a) **Belize:**

“[T]he occupation is in any event now unlawful: the conditions of necessity and proportionality would have ceased to have been met a very long time ago.”²¹⁹

(b) **Chile:**

“[T]he occupation of Palestinian territory ... is not justified as a measure necessary for Israel’s protection.”²²⁰

(c) **Gambia:**

“It is simply not possible that it has been *necessary* for Israel to maintain its occupation since 1967. In *Nicaragua v. United States*, the Court found the United States’ use of force to have been unnecessary because it was taken ‘*several months* after the major offensive of the armed opposition against the Government of El Salvador had been completely repulsed’. In this case, Israel has maintained its occupation through the use of force for *56 years* ...

.....

Israel’s prolonged occupation is, moreover, wholly disproportionate to any legitimate aim. Israel’s occupation of the *entirety* of the OPT ‘long after the period in which any presumed armed attack ... could reasonably be contemplated’ makes it even more disproportionate now. And the *manner* in which the occupation has been conducted—including the establishment of an apartheid regime—renders the occupation disproportionate as well.

[T]he prolonged occupation has been neither necessary nor proportionate. As a result, Israel’s occupation is illegal as a whole and must end.”²²¹

(d) **Ireland:**

“Even if Israel’s settlement activity did not amount to annexation or breach the right to self-determination, it could not possibly be justified as self-

²¹⁹ Written Statement of Belize, para. 33.

²²⁰ Written Statement of Chile, para. 119.

²²¹ Written Statement of the Gambia, para. 1.28 and para. 1.30, 1.31 (footnotes omitted).

defence because it would not, in any event, be a necessary or proportionate measure (as required by international law of any measure taken in the exercise of the right to self-defence).”²²²

(e) Jordan:

“[T]here are no security or military concerns that Israel could reasonably invoke to justify the measures in question. Indeed, even if Israel has occasionally invoked terrorist threats to explain its actions, this cannot be regarded as an objective and proportionate justification within the framework of international humanitarian law 56 years after the commencement of the occupation. There is no terrorist threat that could possibly justify Israel’s ongoing violation of the right of the Palestinian people to self-determination; the continuous expansion of Israeli settlements on the land of Palestinians; the annexation of the Occupied Palestinian Territory contrary to the principle of non-acquisition of territory by force; or the adoption by Israeli authorities of an egregious policy of racial discrimination targeting Palestinians.”²²³

(f) Pakistan:

“A prolonged occupation, with its *de facto* and *de jure* annexations and various violations of international humanitarian law, is a breach of the right to self-determination. Moreover, these violations together indicate that the military necessity and proportionality requirements for self-defence, are no longer satisfied, making the occupation illegal on the basis of *jus ad bellum*.”²²⁴

(g) Qatar:

“The pattern of military attacks and the blockade, which have dominated and severely impaired every aspect of life in Gaza for over 15 long years, are not proportionate to achieving any legitimate security goals.”²²⁵

2.49. Israel’s invocation of “security concerns” as a purported justification for its occupation of the OPT has been rejected not only by the States and international organizations that submitted Written Statements to the Court, but also by

²²² Written Statement of Ireland, para. 45.

²²³ Written Statement of Jordan, para. 5.11.

²²⁴ Written Statement of Pakistan, para. 22 (i).

²²⁵ Written Statement of Qatar, Vol. I, para. 3.157 (emphasis omitted).

independent and authoritative UN bodies on multiple occasions. In her September 2022 report, for example, the Special Rapporteur described Israel's occupation as a "prolonged occupation maintained for ostensible 'security reasons' disguising Israeli settler-colonial intentions to extinguish the Palestinian people's right of self-determination while acquiring their receding territory as its own". She concluded that "the very existence of such an occupation entails an unlawful use of force and therefore can be seen as an act of aggression. An act of aggression constitutes a violation of the *jus ad bellum*, which cannot be dismissed, as Israel often does, by claims of 'pre-emptive' self-defence."²²⁶

2.50. These conclusions mirror those of the Court in the *Wall* Opinion. After rejecting the applicability of Article 51 of the United Nations Charter, the Court went on to reject Israel's contention that the wall was necessary on security grounds:

"[T]he Court, from the material available to it, is not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives. The wall, along the route chosen, and its associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order. The construction of such a wall accordingly constitutes breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments."²²⁷

2.51. In their recent study on the legality of the Israeli occupation, the United Nations Committee on the Inalienable Rights of the Palestinian People and the Irish Centre for Human Rights concluded that the occupation could not be justified as "self-defence" because it failed to satisfy the tests of necessity and proportionality, especially because it violates peremptory norms of international law:

"[Israel's] annexations [of East Jerusalem and the settlements and land comprising Area C] breach the prohibition on the acquisition of territory through use of force, a peremptory norm of international law. Further, the permanent annexationist intentions demonstrate that the occupation,

²²⁶ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 September 2022, A/77/356, paras. 71-72 (<https://undocs.org/A/77/356>). The Legal Study similarly posits that "such prohibited acts of aggression are illegal acts and may invalidate the legality of an occupation as a continuing act of self-defence" (Legal Study, 20 September 2023, A/78/378-S/2023/694, p. 33, <https://undocs.org/A/78/378>).

²²⁷ *Wall* Opinion, pp. 193-194, para. 137.

supposedly undertaken as an act of self-defence but concluded instead as a land grab, has breached military necessity and proportionality and is radically divorced from its origins as a use of force responding to the alleged Egyptian blockade [of 1967] ...

The second peremptory norm breached by Israel is the realization of the Palestinian people of their right to external self-determination and an independent State... On this basis, the administration of the Palestinian territory in a manner denying the external right to self-determination, a *jus cogens* norm of international law, is indicative of a breach of the principles of necessity and proportionality for self-defence, making the occupation unlawful.”²²⁸

2.52. Finally, as the State of Palestine pointed out in its Written Statement, the Security Council and the General Assembly have repeatedly called for Israel to end its occupation of the OPT, including East Jerusalem, with the General Assembly characterizing the occupation as “illegal”²²⁹. As long ago as November 1977, for example, the General Assembly adopted a resolution which expressed deep concern “that the Arab territories occupied since 1967 have continued, for more than ten years, to be under *illegal* Israeli occupation”; reaffirmed “that the acquisition of territory by force is *inadmissible* and that all territories thus occupied must be returned”; and “*Condemn[ed]* Israel’s continued occupation of Arab territories, *in violation of the Charter of the United Nations, the principles of international law and repeated resolutions of the United Nations*”²³⁰. In June 1980, as indicated above, the Security Council “*Reaffirm[ed]* the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel, including Jerusalem”²³¹. In December 2016, the Security Council explicitly called for “an end to the Israeli occupation that began in 1967”²³². Such unequivocal calls by principal organs of the United Nations, forty-five years ago and consistently since, for Israel to end its occupation of the OPT preclude any recognition of that occupation as an ongoing necessary and proportionate use of force in the exercise of a legitimate right of self-defence.

²²⁸ Legal Study, 20 September 2023, A/78/378-S/2023/694, p. 56 (<https://undocs.org/A/78/378>).

²²⁹ Written Statement of the State of Palestine, paras. 3.10-3.17, 3.92, 6.13-6.15.

²³⁰ General Assembly, Resolution 32/20, 25 November 1977, preamble and para. 1 (emphasis added).

²³¹ Security Council, Resolution 471 (1980), 5 June 1980, para. 6.

²³² Security Council, Resolution 2334 (2016), 23 December 2016, para. 9.

VI. The Legal Consequences of Israel's Illegal Annexation and Occupation of the OPT, including East Jerusalem

2.53. As noted above, all States – including the State of Palestine²³³ – that have addressed the merits of the question of the legality of Israel's occupation of the OPT agree that Israel's occupation and annexation are illegal under international law. There is thus a broad consensus that Israel, through its prolonged occupation of the OPT and the *de jure* or *de facto* annexation of that territory, is violating peremptory norms of international law including those prohibiting territorial acquisition by use of force, and racial discrimination and apartheid, the obligation to respect the right of self-determination and a large number of its obligations under international humanitarian law which are “intransgressible principles of international customary law”²³⁴. These systematic violations are blatant, deliberate and severely undermine the rights of the Palestinians as a people and Palestine as a State.

2.54. All the States and international organizations that have denounced the wrongfulness of Israel's conduct agree that these systematic and grave breaches of peremptory norms of international law carry with them legal consequences for the three categories of actors mentioned in the questions put to the Court, namely: Israel as the State responsible for the breaches (A), other States (B) and the United Nations (C).

2.55. In its Written Statement, the State of Palestine devoted a Chapter to the “Legal Consequences” of Israel's violations of its international obligations in relation to its prolonged occupation and annexation of the OPT (Chapter 7). In the present Written Comments, however, the State of Palestine will separately address the legal consequences of the main categories of Israel's breaches of international law starting, in the present Chapter, with those stemming from Israel's unlawful occupation and annexation.

A. LEGAL CONSEQUENCES FOR ISRAEL

2.56. Like the State of Palestine, most of the States and international organizations that have taken a position on the consequences of the prolonged occupation and annexation of the OPT have relied on the ILC Articles on Responsibility of States for Internationally Wrongful Acts (“Articles on State

²³³ Written Statement of the State of Palestine, paras. 3.1-6.19.

²³⁴ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 257, para. 79; *Wall Opinion*, p. 199, para. 157.

Responsibility”)²³⁵. In accordance with the provisions of the second part of the Articles on State Responsibility, those States and organizations have stressed that Israel must cease its violations, must give assurances and guarantees of non-repetition, and must make full reparation for the resulting damage.

1. Israel Must Cease its Wrongful Conduct relating to the Occupation and Annexation of the OPT and Provide Assurances and Guarantees of Non-Repetition.

2.57. Article 30 of the Articles on State Responsibility constitutes the unanimous starting point²³⁶ in the Written Statements for identifying the legal consequences for Israel of the internationally wrongful acts of which it is responsible. As a result, there is a clear agreement throughout the Written Statements regarding both: Israel’s obligation to cease its unlawful international acts in connection with the annexation and occupation of the OPT (a); and Israel’s obligation to provide assurances and guarantees of non-repetition of those acts to the State of Palestine and to the community of States (b).

(a) The Obligation to Cease its Wrongful Conduct

2.58. In respect of the obligation of cessation, **Egypt** rightly points out that:

“The function of cessation is to *put an end to a violation of international law and to safeguard the continuing validity and effectiveness of the underlying primary rule*. The responsible State’s obligation of cessation thus protects both the interests of the injured State or States and the interests of the international community as a whole in the preservation of, and reliance on, the rule of law.”²³⁷

2.59. A number of States, quoting Article 30(a) of the Articles on State Responsibility, have pointed out that “the State responsible for the internationally wrongful act is under an obligation to cease that act, if it is continuing”²³⁸. As France correctly observes: “Les deux conditions classiques en sont : i/ le caractère

²³⁵ See Draft Articles on Responsibility of States for Internationally Wrongful Acts, *ILC Yearbook*, 2001, Vol. II, Part Two.

²³⁶ See, e.g., Written Statements of Lebanon, para. 55; of Belize, para. 75, fn. 252, mentioning Article 30 of the Articles on State Responsibility; and of Egypt, paras. 301-302.

²³⁷ Written Statement of Egypt, para. 303 (emphasis in the original), quoting as per fn. 175: “[Draft Articles on States Responsibility, *op. cit.*] Article 30, Commentary, para. 5.”

²³⁸ See, e.g., Written Statement of Egypt, paras. 301 (quoted), see also paras. 302-303; Written Statement of Lebanon, para. 55.

continu de l'acte illicite et ii/ le fait que la règle violée soit toujours en vigueur.”²³⁹ These conditions, recalled in numerous previous cases²⁴⁰, including before the Court, have been identified by several of the intervening States and international organizations²⁴¹.

2.60. These same States unanimously consider that the conditions are fulfilled in the present case. Many States and international organizations have also stressed the need for Israel to put an end to these violations *immediately*. The League of the Arab States, for example, states that: “The present Court has repeatedly affirmed that the duty of cessation constitutes an obligation to take immediate steps to put an end to the continuing wrongful act.”²⁴² This is in line with Security Council Resolution 2334 (2016), which reiterated the Security Council’s “demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard”²⁴³. Similarly, as it has demanded in successive resolutions, the General Assembly, in its resolution 77/25, called “upon Israel, the occupying Power, to comply strictly with its obligations under international law and to cease all of its measures that are contrary to international law ... and recalls in this regard the principle of the inadmissibility of the acquisition of land by force and therefore the illegality of the annexation of any part of the Occupied Palestinian Territory, including East Jerusalem, which constitutes a breach of international law, undermines the viability of the two-State solution and challenges the prospects for

²³⁹ Written Statement of France, para. 79 and fn. 67 (“Voir la sentence arbitrale du 30 avril 1990 dans l’affaire du *Rainbow Warrior*, *Recueil des sentences arbitrales*, vol. XX, p. 270, par. 113 ; voir également Articles de 2001, commentaires, *Ann. C.D.I.*, 2001, vol. II(2), p. 234”) (unofficial translation: “The two classic conditions are: i/ the continuing nature of the unlawful act and ii/ the fact that the rule breached is still in force.”). See also Written Statement of the African Union, para. 196 and *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*, p. 54, para. 118.

²⁴⁰ See, e.g., “*Jurisdictional Immunities of the State ...*, *Judgement*, *ICJ Reports 2012*, p. 153, para. 137” quoted in the Written Statement of Egypt, para. 301 or Written Statement of France, para. 79, fn. 67 referring to “sentence arbitrale du 30 avril 1990 dans l’affaire du *Rainbow Warrior*, *Recueil des sentences arbitrales*, vol. XX, p. 270, par. 113”.

²⁴¹ See, e.g., the Written Statements of the African Union, para. 196 and South Africa, para. 141.

²⁴² Written Statement of the League of Arab States, para. 122. See also Written Statements of Egypt, para. 303 and Written Statement of Lebanon, para. 59.

²⁴³ Security Council, Resolution 2334 (2016) quoted in the Written Statement of Spain, para. 5.1. See also, e.g., the Written Statement of Norway, p. 3 and the Written Statement of Malaysia, para. 4.c. See also, e.g., General Assembly, Resolution 77/208, 15 December 2022.

the achievement of a peaceful settlement and of just, lasting and comprehensive peace”²⁴⁴.

2.61. It has also been pointed out that the Court, in some of its judgments and advisory opinions, has itself called for an *immediate* end to violations of international law. Reference was thus made to the Court’s judgment on the merits in the *Military and Paramilitary Activities in Nicaragua* Case, in which the Court stated 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”²⁴⁵ or the *Namibia* Advisory Opinion stating that “the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory”²⁴⁶.

2.62. Various practical modalities for the cessation by Israel of its wrongful international acts have been envisaged by the participants in these proceedings. Like **Brazil**, many of them have taken the view that:

“In the present case, the occupying Power is under the obligation to cease its occupation as a whole. This includes ceasing the construction of settlements and the transfer of populations, and measures that would correspond to *de iure* annexation of territory, including East Jerusalem. The cessation of the act also includes the complete, expeditious and unconditional withdrawal from the occupied Palestinian territories as a whole.”²⁴⁷

2.63. The **Maldives** similarly argued that “according to the customary international legal rules on State responsibility reflected in the above-mentioned jurisprudence, Israel is obliged to cease, as soon as possible: (i) its unlawful occupation of the OPT”²⁴⁸. **Bolivia** also asserted that:

²⁴⁴ General Assembly, Resolution 77/25, 30 November 2022, para. 6.

²⁴⁵ *Military and Paramilitary Activities in and against Nicaragua, Merits, Judgment, I.C.J. Reports 1986*, p. 146, para. 292 (emphasis added), as also referred to in the Written Statement of Malaysia, para. 65, fn. 110.

²⁴⁶ *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*, p. 58, para. 133, also quoted in the Written Statement of Qatar, Vol. I, para. 5.7; *Wall* Opinion, para. 150; *Chagos* Opinion, para. 178. See also the Written Statement of the African Union, para. 201, fn. 348 quoting “United States Diplomatic and Consular Staff in Tehran ...”, Judgment, I.C.J. Reports 1980, p. 3, para. 95”.

²⁴⁷ Written Statement of Brazil, para. 50.

²⁴⁸ Written Statement of Maldives, para. 48.

“The legal consequences of a determination by the International Court of Justice that the Israeli occupation of Palestinian territory is illegal both in its conduct and in its objective, will set a precedent to call Israel to fulfill its obligation to bring an immediate and unconditional peaceful end to the illegal situation for which it is internationally responsible, that is, its occupation of the Occupied Palestinian Territories.”²⁴⁹

2.64. Still in the same vein, **Lebanon** stressed that:

“L’occupation Israélienne du Territoire Palestinien est illégale tant dans sa conduite que dans son but. Par conséquent, Israël est dans l’obligation de mettre un terme immédiat et inconditionnel à cette situation illégale dont il est internationalement responsable et de fournir réparation.”²⁵⁰

2.65. Israel’s obligation to cease its unlawful annexation of the OPT necessarily entails the cessation of other related internationally illegal acts. A number of States have rightly asserted that, in addition to the withdrawal of Israeli forces and the end of its settlements, the legal framework which establishes and condones these violations of international law must also be eliminated. **Qatar**, for example, states that:

“... Israel must, *inter alia*:

- Repeal or render ineffective any laws, statutes, regulations or other measures, through which Israel purports to exercise governmental authority in the OPT;
- Repeal or render ineffective all military orders applicable to the OPT;
- Cease the development of additional Jewish Israeli settlements in the West Bank, including East Jerusalem, and withdraw such settlements that already exist;
- Dismantle the Wall in the West Bank, including East Jerusalem (as the Court already held in the Wall advisory opinion); and

²⁴⁹ Written Statement of Bolivia, p. 14.

²⁵⁰ Written Statement of Lebanon, para. 59 (emphasis in the original) (unofficial translation: “The Israeli occupation of the Palestinian Territory is illegal in both its conduct and its purpose. Consequently, Israel is under an obligation to put an immediate and unconditional end to this illegal situation for which it is internationally responsible and to provide reparation.”).

- Lift the blockade of the Gaza Strip.”²⁵¹

2.66. **Pakistan** likewise states that in view of Israel’s unlawful occupation of the OPT,

“Israel is bound to

- (a) Immediately and completely cease and reverse all settlements, and related activities in the OPT, including East Jerusalem, in accordance with relevant UN resolutions,
- (b) Rescind all policies and practices contributing to a coercive environment and/or increasing the risk of forcible transfer of Palestinians;

-
- (e) Take all steps necessary to protect the Palestinian population and their property from settler violence and ensure that all incidents of violence by settlers and Israeli security forces against Palestinians and damage to their property are promptly, effectively, thoroughly and transparently investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are provided with effective remedies, including adequate compensation, in accordance with international standards”.²⁵²

2.67. Israel’s *de jure annexation* of Jerusalem also gives rise to a duty to cease various specific violations of international law pertaining to the special status of the Holy City. As **Jordan** explains:

“Israel is under an obligation to cease its internationally wrongful acts; this includes the obligation to cease its violations of international law applicable to the maintenance, preservation and, administration of and freedom of access to the Holy Places in East Jerusalem.”²⁵³

2.68. The State of Palestine concurs with and endorses all of these submissions.

²⁵¹ Written Statement of Qatar, Vol. I, para. 5.8 (footnote omitted).

²⁵² Written Statement of Pakistan, para. 114 (6), (a), (b) and (e).

²⁵³ Written Statement of Jordan, p. 109, para. 2(c)(i). See also Written Statement of Brazil, para. 50; Written Statement of France, para. 85; Written Statement of Syria, para. 16; Written Statement of Oman, p. 3.

(b) *Assurances and Guarantees of Non-Repetition*

2.69. In its first Written Statement, the State of Palestine explained that although the obligation to provide assurances and guarantees of non-repetition is not an automatic consequence of every internationally wrongful act, the present case is a paradigmatic example of a situation where “circumstances ... require” such measures as provided for under Article 30 (b) of the Articles on State Responsibility.²⁵⁴ This conclusion is shared by a number of other States.²⁵⁵ **Brazil**, for example, explains that:

“given the circumstances of the case, the responsible State should offer appropriate assurances and guarantees of non-repetition. These assurances could take the form, *inter alia*, of official declarations, international commitments, and legislative and administrative measures.”²⁵⁶

2.70. The **League of Arab States** identifies the following “circumstances” which demonstrate the necessity for Israel to provide assurances and guarantees of non-repetition:

- “(1) The nature of the obligations breached: rules of international law of a fundamental character - peremptory norms, as outlined above.
- (2) The nature of the breaches, which can be divided into six factors:
 - The *duration* of the breaches that spans over 75 years, through the policies and practices of all governments of Israel during that period.
 - The *widespread, systematic and structural* nature of the breaches.
 - The *consistently repeated* nature of the breaches, and *repeated refusal to heed the calls to end them* made by the Palestinian people generally and the Palestinian leadership and the State of Palestine in particular, the General Assembly, the Security Council, the Human Rights Council, the Economic and Social Council, the present Court, other UN bodies and office-holders including multiple Secretaries-General, other international organizations, and many States from all regions in the world, over a more than a half-century period covering, for the

²⁵⁴ Written Statement of the State of Palestine, para. 7.28.

²⁵⁵ See, e.g., the Written Statement of Chile, para. 120; the Written Statement of Saudi Arabia, para. 78 (c); Written Statement of Bangladesh, para. 32.

²⁵⁶ Written Statement of Brazil, para. 51.

United Nations, almost two thirds of the time the organization has been in existence.

- The *link between the breaches and unlawful claims that underlie and explain their commission including*: that Israel is entitled to the entire land between the Jordan river and the Mediterranean sea and that the Palestinian people do not have the right of self-determination.
 - The way the *breaches have worsened* over decades, including in the course of the occupation, for example the quantum of settlements; the introduction of the Wall and the apartheid road system; the pillage of natural resources.
 - The *seriousness* of the breaches as indicated above.
- (3) The foregoing nature of the breaches suggest a real risk of future repetition even if they are initially brought to an end.”²⁵⁷

Although the circumstances thus described apply generally to all the facts giving rise to the questions submitted to the Court, they are particularly pertinent to the legal consequences of Israel’s annexation of territory and its obligation to bring its occupation of the OPT to a complete, final and irreversible end. Assurances and guarantees of non-repetition are necessary to ensure and secure that outcome.

2.71. Indeed, referring to the *Lagrand* case, **Qatar** considers that assurances and guarantees of non-repetition are especially necessary in this case since:

“In contrast to the United States in [the *Lagrand* case], Israel here has neither committed to adopt, nor actually adopted, any measures to implement the obligations that it is currently breaching and has been breaching for over 55 years. On the contrary, Israel’s long-standing policy is to maintain its illegal occupation. It has persisted in doing so in flagrant disregard of the Court’s Advisory Opinion in the *Wall* case, and the repeated resolutions of the General Assembly and the Security Council. There is thus every reason to believe that Israel will repeat its grave violations of international law in the future.”²⁵⁸

²⁵⁷ Written Statement of the League of Arab States, para. 142 (emphasis in the original; footnotes omitted).

²⁵⁸ Written Statement of Qatar, Vol. I, para. 5.14.

2.72. The State of Palestine concurs with and endorses all of these observations.

2. Israel is under an Obligation to Make Full Reparation

2.73. As the State of Palestine explained in its first Written Statement, the other main obligation resulting from Israel's violations of international law, arising from the occupation and annexation of the OPT, is the obligation "to make full reparation" to the State of Palestine and the Palestinian people as a whole, including those in the Occupied Palestinian Territory, including East Jerusalem, Palestinian citizens of Israel and Palestinian refugees and exiles in the diaspora, in conformity with Articles 34 to 37 of the Articles on State Responsibility.²⁵⁹ The Written Statements provided by other States and international organizations provide strong support for this conclusion and explain that Israel must provide restitution (a), compensation (b), and satisfaction (c).

(a) Restitution

2.74. In their Written Statements, States and international organizations have emphasized that restitution should be the preferred form of reparation for the damage caused by Israel's unlawful occupation of the OPT.²⁶⁰ As **Brazil** points out (citing the Court's predecessor in the *Factory of Chorzów* case):

"According to the Court's *jurisprudence constante*, 'reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed'²⁶¹. Therefore, *restitutio in integrum* is the first and foremost form of reparation, inasmuch as it re-establishes the situation which existed before the wrongful act was committed."²⁶²

2.75. States are also clear that practical difficulties in making restitution do not relieve a wrongdoing State of its duty to provide such restitution. As **France** explains:

²⁵⁹ Written Statement of the State of Palestine, paras. 7.32 – 7.85.

²⁶⁰ See, e.g., Written Statements of Malaysia, para. 67, a. and b.; of Qatar, Vol. I, para. 5.18 or of Maldives, para. 45(c).

²⁶¹ Written Statement of Brazil, para. 54, fn. 19: "Factory at Chorzów, Merits, Judgment No 13, 1928, P.C.I.J., Series A, No. 17, p. 47."

²⁶² Written Statement of Brazil, para. 54.

“Dans le cadre de la présente demande d’avis consultatif, la France considère que cette obligation de réparation s’étend à l’ensemble des dommages causés à la population palestinienne du fait de la politique et des pratiques d’Israël ne respectant pas le droit international. L’obligation de réparation doit, autant que faire se peut, prendre la forme de la restitution et, à défaut, celle de l’indemnisation si la restitution *n’est plus possible*.”²⁶³

2.76. There is a clear consensus that Israel’s obligation of restitution includes (but is by no means limited to) withdrawing fully from the OPT and dismantling the Wall and all of the settlements it has constructed in the occupied territory. For example, the **African Union** states:

“Israel is under an obligation to provide restitution by undertaking the following:

- a. Ending the occupation of the Palestinian territories that has continued since 1967 by completely withdrawing from the West Bank, East Jerusalem, and the Gaza Strip. This accords with resolutions previously adopted by the United Nations that called upon Israel to withdraw – completely, immediately and unconditionally – from the occupied Palestinian territories.
- b. Dismantling all established settlements and outposts in the West Bank and East Jerusalem.
- c. Dismantling all established bypass roads in the West Bank and East Jerusalem.
- d. Dismantling those portions of the Separation Wall that have been constructed.
- e. Returning all lands or properties expropriated from any natural or legal persons in the West Bank and East Jerusalem.

²⁶³ Written Statement of France, para. 89 (emphasis added) and fn. 78, which reads: “Articles de 2001, *Ann. C.D.I.*, 2001, vol. II(2), pp. 256-283, art. 35 et 36 et commentaires” (unofficial translation: “In the context of this request for an advisory opinion, France considers that this obligation of reparation extends to all damage caused to the Palestinian population as a result of Israel’s policies and practices that do not comply with international law. The obligation to make reparation must, as far as possible, take the form of restitution and, *failing that*, compensation if restitution *is no longer possible*.”). See also the Written Statement of the State of Palestine, paras. 7.56-7.57.

- f. Repealing and rendering ineffective forthwith all legislative, administrative, or regulatory acts that amount or contribute to the *de facto* or *de jure* annexation of the occupied Palestinian territories.
- g. Repealing and rendering ineffective forthwith all legislative, administrative, or regulatory acts that amount or contribute to the expropriation of lands in the West Bank and East Jerusalem.”²⁶⁴

2.77. **Saudi Arabia** similarly states:

“This [obligation to make full reparation] entails, *inter alia*, that in order to bring itself into compliance with its international obligations, Israel must unconditionally withdraw from the Occupied Palestinian Territory, dismantle the separation wall where it encroaches on the Occupied Palestinian Territory, including East Jerusalem, and remove its civilian population from that territory, and rescind all legal and administrative measures in furtherance of its illegal occupation of such territory”.²⁶⁵

2.78. Although the extent and gravity of Israel’s violations of international law are unprecedented, the removal and repatriation of a substantial colonial population from occupied territory is not. As the **African Union** notes:

“[H]istory provides several examples of an occupying or colonizing power removing its population from an occupied or formerly colonized territory. For instance, and as pointed out by scholars in this context, ‘France’s repatriation of more than a million *pieds noirs*, many of whom had resided in Algeria for generations, points to what is possible when there is political will’”.²⁶⁶

2.79. Here again, the State of Palestine notes that the views of the intervening States in respect of the obligation of restitution fully coincide with its own position. It also notes that the States which have incited the Court not to accede to the request for an Opinion, not only failed to comment on the substance of the questions put, but also failed to support their position with reference to the alleged difficulties of reparation, including in the form of restitution.

²⁶⁴ Written Statement of the African Union, para. 203 (footnote omitted). See also the Written Statement of Pakistan, para. 91.

²⁶⁵ Written Statement of Saudi Arabia, para. 78, d.

²⁶⁶ Written Statement of the African Union, para. 206 quoting, fn. 354: “Omar Dajani and Hiba Husseini, *The Emerging Reality in Palestine: Entrenched Occupation and ‘Fragnation’*, Norwegian Peacebuilding Resource Centre, October 2014, available at: [https://tinyurl.com/2b3tapkv].”

(b) *Compensation*

2.80. As **Egypt** has pointed out (quoting the International Law Commission):

“In order to achieve that goal [of reparations] in the ‘concrete circumstances surrounding each case and [given] the precise nature and scope of the injury,’²⁶⁷ the various forms of reparation may have to be combined. As explained by the ILC:

‘full reparation may only be achieved in particular cases by the combination of different forms of reparation. For example, re-establishment of the situation which existed before the breach may not be sufficient for full reparation because the wrongful act has caused additional material damage (e.g. injury flowing from the loss of the use of property wrongfully seized). Wiping out all the consequences of the wrongful act may thus require some or all forms of reparation to be provided, depending on the type and extent of the injury that has been caused.’²⁶⁸

2.81. Among these forms of reparation, intervening States and international organizations have generally underlined Israel’s obligation to compensate the damage caused to the State of Palestine and the Palestinian people insofar as restitution would be impossible. For example, **Saudi Arabia** states that “[c]ompensation must also be paid [by Israel] to all legal and natural persons injured by Israel’s internationally wrongful acts insofar as restitution would be insufficient to ensure full reparation for the injury caused over the length of Israel’s illegal occupation”²⁶⁹. **Qatar** likewise highlights that “[i]n the present case, Israel is under an obligation to compensate for all damage caused to individual natural or legal persons (in particular, Palestinian persons) as a result of its prolonged occupation of the OPT”²⁷⁰.

2.82. This compensation, *inter alia*, must fully compensate for all the damage caused by Israel’s unlawful occupation of Palestinian territory. As an indication, examining just a twenty-year period in the course of the occupation, **Belize** recalls that:

²⁶⁷ Written Statement of Egypt, para. 309, fn. 180: “*Avena and Other Mexican Nationals...*, Judgment, I.C.J. Reports 2004 (I), p. 59, para. 119”

²⁶⁸ Written Statement of Egypt, para. 309 and fn. 181: “Draft Articles on States Responsibility, *op. cit.*, Article 34, Commentary, para. 2.”

²⁶⁹ Written Statement of Saudi Arabia, para. 78, d.

²⁷⁰ Written Statement of Qatar, Vol. I, para. 5.24.

“UNCTAD estimates that, as a result of Israel’s occupation of the West Bank, in the period 2000-2019 – during the whole of which period Israel’s occupation was unlawful – the Palestinian people have lost USD\$57.7 billion.”²⁷¹

2.83. Whatever the soundness of that estimate, it is of academic interest only in the present context. This is because the advisory opinion which the Court is called upon to give is not the place to assess the amount of compensation due to the State of Palestine and to the Palestinian people. Several intervening States have wrongly argued that the Court should refuse to respond to the request for an advisory opinion on the pretext that it does not have all the information it needs to assess the substance of the questions raised²⁷² or, on the contrary, that it would be unable to process the volume of information at its disposal.²⁷³ That position is based on a misunderstanding of the interpretation of those questions: the Court is not being asked to put a specific figure (or range of possible figures) on the amount of compensation. Rather, the Court is being asked to rule upon the legal consequences resulting from Israel’s breaches of its obligations, starting with the continuation of its unlawful occupation and annexation of the OPT, and its denial of the right of the Palestinian people to self-determination and discriminatory legislation and measures against them.

2.84. Like the great majority of the States that have filed Written Statements, the State of Palestine considers that it is for the Court to rule on *the principle* that compensation is due by Israel to the State of Palestine and the Palestinian people and the forms it could take for the damage resulting from these internationally wrongful acts if the restitution that is required in the first place is not sufficient to make good the damage (which is more than likely). However, the quantification of that compensation, and the means and modalities of its distribution, are not matters which the Court is called upon to determine in these advisory proceedings.

(c) *Satisfaction*

2.85. Many States and international organizations have stressed Israel’s obligation to provide adequate satisfaction for the harm caused to the State of

²⁷¹ Written Statement of Belize, para. 80 (footnote omitted), basing itself on the report mentioned at fn. 270: “UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: Arrested Development and Poverty in the West Bank* (2021) (available at [<https://tinyurl.com/bdes49t4>]), p. vi”. See also the Written Statement of France, para. 90.

²⁷² Written Statement of Guatemala, paras. 30-33.

²⁷³ Written Statement of the United Kingdom, para. 66.

Palestine and the Palestinian people by its unlawful occupation of the OPT.²⁷⁴ This confirms and supports the position set out in the State of Palestine's first round Written Statement.²⁷⁵

2.86. With regard to the practical arrangements for achieving satisfaction, the State of Palestine agrees in particular with **France** that:

“Au titre de la satisfaction, il conviendrait, s’agissant de violations graves du droit international humanitaire et du droit international des droits de l’Homme commises dans le territoire palestinien occupé, qu’Israël procède à la recherche et la divulgation des faits et mène des enquêtes pour identifier et poursuivre les personnes responsables.”²⁷⁶

2.87. In some respect satisfaction might appear to be a purely symbolic form of reparation. However, given the gravity of the violations of the fundamental principles of international law committed by Israel and the considerable suffering endured by the Palestinian people both collectively and in the person of each of its members, satisfaction is of particular importance in this case. Moreover, the prosecution and conviction of those responsible for the illegal occupation and Israeli settlements in occupied territory would contribute to the guarantees of non-repetition that the State of Palestine is entitled to receive from Israel.

B. LEGAL CONSEQUENCES FOR ALL OTHER STATES

2.88. All States and international organizations that have examined the legal consequences of Israel's policy of annexation and settlement acknowledge that Israel's violation of peremptory norms of international law has legal consequences for States other than Israel.²⁷⁷ In particular, there is a broad consensus that those States are required not to recognize *directly* or *indirectly* the situation resulting from Israel's policy of illegal occupation of the OPT in all of its manifestations, including its policy of annexation and settlement (1), not to provide aid or assistance to Israel

²⁷⁴ See, e.g., Written Statements of Belize, para. 81; of Egypt, para. 317; of the League of Arab States, para. 155; and of Qatar, Vol. I, paras. 5.30-5.35.

²⁷⁵ Written Statement of the State of Palestine, paras. 7.96-7.97.

²⁷⁶ Written Statement of France, para. 89 (unofficial translation: “As a matter of satisfaction, in the case of serious violations of international humanitarian law and international human rights law committed in the Occupied Palestinian Territory, Israel should investigate and disclose the facts and conduct enquiries to identify and prosecute those responsible.”).

²⁷⁷ See, e.g., Written Statements of Belize, para. 82; of Indonesia, para. 63; of Brazil, para. 58; and of Ireland, para. 50.

in connection with these illegal acts (2) and to cooperate with a view to putting an end to them (3).

1. The Obligation of Non-Recognition

2.89. As various Written Statements explain, the first obligation incumbent on States as a result of Israel's unlawful occupation of the OPT is the duty not to recognize the situation resulting from this state of affairs, which is illegal under international law.²⁷⁸ Those Written Statements therefore strongly support the conclusion set out in the State of Palestine's first Written Statement.²⁷⁹

2.90. Many States cite precedents from the Court recalling the obligation of non-recognition of the acquisition of territory by force, in particular the Advisory Opinions relating to the *Wall* and to *Namibia*²⁸⁰. Security Council resolution 2334²⁸¹ and General Assembly resolutions have also been quoted at length to recall the peremptory obligation not to recognize Israel's policy of attempting to establish a *fait accompli* in the OPT²⁸². In this regard, the State of Palestine notes the explicit commitments made by certain States not to recognize the existing illegal state of affairs. **France**, for example, pledges that:

“dans les territoires palestiniens occupés, comme partout ailleurs, la France ne reconnaîtra jamais l'annexion illégale de territoires.”²⁸³

2.91. The obligation not to recognize the situation resulting from Israel's illegal occupation of the OPT is not limited solely to the prohibition against explicitly recognizing Jerusalem as the capital of Israel or explicitly recognizing purported Israeli sovereignty over all or part of the territory of the State of Palestine. As **Ireland** has pointed out:

²⁷⁸ See, e.g., Written Statements of the Maldives, para. 52; of Ireland, para. 53; and of France, para. 93.

²⁷⁹ Written Statement of the State of Palestine, paras. 7.109 – 7.123.

²⁸⁰ See, e.g., Written Statements of Brazil, paras. 61-62; of Ireland, para. 53; and of Qatar, Vol. I, para. 5.42.

²⁸¹ See, e.g., the Written Statements of Brazil, para. 63; of Switzerland, para. 5; and of China, para. 26.

²⁸² See, e.g., General Assembly, Resolution 77/25 of 30 November 2022 mentioned by Türkiye in its Written Statement, p. 7 and the Written Statement of Ireland, para. 54, quoting “General Assembly resolution 68/262 of 27 March 2014, A/RES/68/262, para. 6” regarding the situation in Crimea.

²⁸³ See Written Statement of France, para. 93 (unofficial translation: “in the occupied Palestinian territories, as elsewhere, France will never recognise the illegal annexation of territories”). See also Written Statements of Belize, para. 84 (b); and of Egypt, para. 321, a.

“Customary international law, as reflected by Article 41 of the Draft Articles, also obliges states not to recognise as lawful the situation created by this breach, either formally or *by acts which would imply such recognition*.”²⁸⁴

2.92. The prohibition of recognition of the effects of Israel’s illegal occupation of Palestinian territory has implications with regard to the agreements concluded by other States with Israel, since such agreement can produce no legal effects on the Palestinian territory. Accordingly, the **African Union** therefore recommends:

“A moratorium on any international legal agreement with the breaching state that would apply or extend its benefits to the unlawfully occupied territory. Existing international instruments between any state and Israel, to the extent that they extend to the occupied territories (if the definition of ‘territory’ in that instrument is capacious enough), should be disregarded to that extent.”²⁸⁵

2.93. The African Union further notes that the duty not to recognize the effects of Israel’s unlawful occupation of the OPT also entails:

“A prohibition on diplomatic or consular activities that would involve the unlawfully occupied territory, and the withdrawal of any diplomatic or consular personnel posted there. This includes any diplomatic or consular activity that would have the effect of entrenching Israel’s efforts to extend its jurisdiction over East Jerusalem. In particular, states should not recognise Jerusalem as the capital of Israel, or relocate their Embassy there.”²⁸⁶

2.94. The obligation of non-recognition also applies to economic matters. As the **League of Arab States** correctly explains:

“The duty of non-recognition includes a requirement not to enter into economic dealings with Israel concerning the occupied territories since they would presuppose, at a minimum, that Israel has legitimate authority with respect to them (whether on a sovereign or a non-sovereign basis) ...

The duty of non-recognition requires States to ensure that that no State companies are involved in corporate activity operating in or more broadly

²⁸⁴ Written Statement of Ireland, para. 53. See also Written Statements of Malaysia, para. 70; and of Brazil, para. 59.

²⁸⁵ Written Statement of the African Union, para. 263 (c). See also Written Statement of the League of Arab States, para. 165.

²⁸⁶ Written Statement of the African Union, para. 203 (d).

linked to the OPT, insofar as this activity concerns Israel or Israeli companies, including those owned by or linked to settlers and/or operating in settlements, bearing in mind that such companies operate on an illegal basis in the OPT. In the context of South Africa and Namibia, the Security Council called on States to ensure that companies and enterprises under the direct ownership or control of the State cease all dealings with or in Namibia, and cease investment activity therein.”²⁸⁷

2.95. The same obligation implies the non-recognition of the illegal acts taken by Israel to regulate materials or goods that may enter the territory of the State of Palestine, including the Gaza Strip²⁸⁸.

2. The Obligation not to Contribute to Israel’s Illegal Occupation

2.96. As the State of Palestine explained in its first Written Statement, the second obligation incumbent on States resulting from Israel’s policy of settlements and annexation is the prohibition on contributing to it by providing any aid whatsoever, whether direct or through the intermediary of the nationals of the concerned States. Citing Article 41 of the Articles on State Responsibility, several other States expressly highlight this important obligation of non-assistance.²⁸⁹

2.97. This obligation applies to military and technological aid provided by certain States to Israel by giving it the material support necessary for its illegal occupation of Palestinian territory.²⁹⁰

2.98. It also applies to economic and trading activities which facilitate the annexation of territory or the expansion and maintenance of the construction of illegal settlements. In particular, as **Ireland** explains, all States are obliged

“to review their trading relationships with the settlements in the Occupied Palestinian Territory and to take steps to prevent trade that assists in the maintenance of the situation created by the settlement activity, or that

²⁸⁷ Written Statement of the League of Arab States, paras. 167-168.

²⁸⁸ Written Statement of the African Union, para. 263 (f).

²⁸⁹ See, e.g., Written Statements of Djibouti, para. 53; of Egypt, para. 177; and of the United Arab Emirates, para. 93.

²⁹⁰ See, e.g., the Written Statements of the African Union, para. 263, b; and of Belize, para. 84, d.

implicitly recognises or serves to entrench Israel's settlement or annexation of that territory."²⁹¹

2.99. And as **Belize** explains, all States are also required to:

“(i) diligently inform [all other States] of which private actors operating in or subject to their jurisdiction are engaged in conduct connected to Israel's illegal practices; (ii) take appropriate steps to regulate or prohibit conduct that supports or maintains such practices; and (iii) impose appropriate consequences under their domestic law for any breach of such regulations or prohibitions.”²⁹²

3. *The Obligation to Cooperate to End Israel's Illegal Occupation*

2.100. The final legal consequence for States is the obligation to cooperate with a view to putting an end to Israel's illegal occupation of the Palestinian territories. As pointed out by a number of States, the obligation to cooperate is a positive obligation for States. The obligation has important implications for the rule of law. As the **African Union** explains, the obligation

“is of paramount importance in a world ruled by laws and comity between sovereign nations. As put by the Inter-American Court of Human Rights: ... the need to eradicate impunity reveals itself to the international community as a duty of cooperation among states for such purpose. Access to justice constitutes a peremptory norm of International Law and, as such, it gives rise to the States' *erga omnes* obligation to adopt all such measures as are necessary to prevent such violations from going unpunished.”²⁹³

2.101. This cooperation can take several forms and take place within an international or regional framework, and via institutionalized or non-institutionalized processes²⁹⁴. In this respect, the State of Palestine shares **Qatar's** view that:

“Given the gravity of the situation, the repetitive and ongoing breach by Israel of multiple peremptory norms, and Israel's recalcitrance, ... it would

²⁹¹ Written Statement of Ireland, para. 56.

²⁹² Written Statement of Belize, para. 87. See also Written Statement of Saudi Arabia, para. 84

²⁹³ Written Statement of the African Union, para. 228, quoting in fn. 392: “*La Cantuta v. Peru*, Merits, Reparations and Costs, Series C No. 162, Inter-American Court of Human Rights, 29 November 2006, para. 160.”

²⁹⁴ See, e.g., Written Statement of Malaysia, para. 69 or Written Statement of Namibia, para. 137 and Written Statement of the Maldives, para. 52.

be helpful for the Court to further specify in its advisory opinion what concrete actions such a joint and coordinated effort might entail.”²⁹⁵

2.102. Qatar offers some examples of the measures that can be adopted, namely:

“expressly condemning Israel’s occupation and discriminatory policies and practices, either unilaterally or through international organizations; declaring Israeli ambassadors or diplomats *persona non grata*; cutting off scientific and cultural ties; ... implementing boycotts of Israeli goods; implementing targeted sanctions against Israel, Israeli entities, and government officials; and supporting resolutions in the United Nations seeking to bring Israel’s occupation and related conduct to an end.”²⁹⁶

2.103. Within international organizations, “the obligation to cooperate imposes a duty on the members of that international organization to act with a view to the organization exercising that discretion in a manner to bring to an end the breach of a peremptory norm of general international law (*jus cogens*)”²⁹⁷. Thus, the right of veto in the Security Council should not be used in a way that is incompatible with the obligation to cooperate to put an end to Israel’s violations of international law²⁹⁸ and “[s]uch cooperation could include suspending Israel from membership in specific United Nations bodies”²⁹⁹.

C. LEGAL CONSEQUENCES FOR THE UNITED NATIONS

2.104. As the State of Palestine explained in its Written Statement, international organizations – including the United Nations – are subject to a similar obligation of non-recognition of the situation resulting from Israel’s unlawful actions in the OPT.³⁰⁰ In this respect, the considerations raised by many States and international organizations in their Written Statements – and set out above – in

²⁹⁵ Written Statement of Qatar, Vol. I, para. 5.57.

²⁹⁶ *Ibid.*, para. 5.57.

²⁹⁷ “ILC, *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens)*, with commentaries, UN Doc. A/77/10 (2022), pp. 75-76” quoted in the Written Statement of Qatar, Vol. I, para. 5.59.

²⁹⁸ Written Statement of Qatar, Vol. I, para. 5.59. See also the Written Statement of Cuba, p. 12.

²⁹⁹ Written Statement of Belize, para. 84(a).

³⁰⁰ Written Statement of the State of Palestine, paras. 7.124-7.126.

support of that prohibition for States are equally applicable to international organizations including the United Nations.

2.105. The United Nations has already partly taken action on this issue, as illustrated by the numerous resolutions of these bodies cited in the various Written Statements. This reflects the fact that, as **Pakistan** notes, when it has competence on a given issue, the organization must act to put an end to the illegal Israeli policy.³⁰¹

2.106. Nor should the United Nations be a springboard for Israel to promote its unlawful occupation of the OPT. Thus, as **Qatar** explains, funds allocated by the United Nations or any of its institutions should not be paid to Israel without first ensuring that they will not support the Israeli occupation.³⁰²

2.107. The United Nations should continue to ensure the provision of assistance to the Palestinian people, notably refugees through the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) by providing the necessary resources to enable UNRWA to carry out its mandate from the General Assembly.

³⁰¹ Written Statement of Pakistan, para. 111.

³⁰² Written Statement of Qatar, Vol. I, para. 5.87.

Chapter 3.

ISRAEL'S DENIAL OF THE PALESTINIAN PEOPLE'S RIGHT TO SELF-DETERMINATION

3.1. United Nations bodies, agencies and officials are also duty-bound, by the Charter and the relevant United Nations resolutions, to support the Palestinian people in their efforts to realize their inalienable right to self-determination, as called for in countless resolutions and in accordance with the Charter of the United Nations.

3.2. Palestine demonstrated, in Chapter 5 of its Written Statement of 24 July 2023, that Israel has continuously denied the right of the Palestinian people to self-determination for over 75 years. As observed by China in its Written Statement, “[t]he question of Palestine has been on the agenda of the United Nations for over 70 years, and Israel has occupied the Palestinian territories for more than half a century. Yet the legitimate national rights of the Palestinian people have not been restored as generations of Palestinians have been waiting in vain their entire lives for that restoration”.³⁰³

3.3. The evidence before the Court fully and indisputably establishes that Israel has denied the right of the Palestinian people to self-determination for 75 years. It has committed this violation of a peremptory norm of international law by, *inter alia*, dispossession and mass displacement of the Palestinian people, prolonged occupation, annexation and settlement of Palestinian territory, and systematic racial discrimination amounting to apartheid.

3.4. The Written Statements submitted by other States and international organisations overwhelmingly support these conclusions. In view of those statements, this Chapter shows that these States and organisations agree with the State of Palestine that: the Palestinian people possess the right of self-determination, including the independence of their State; the Israeli occupation of the OPT denies this right; and that this violation of a peremptory norm of international law renders the occupation illegal (I); the occupation denies the Palestinian people their right to territorial integrity and fragments them into enclaves that are separated from one another (II); and it deprives them of their

³⁰³ Written Statement of China, para. 5.

access to and use of their natural resources (III). The Chapter concludes with a discussion of the legal consequences of Israel's denial of the Palestinian people's right of self-determination, including Israel's obligation to terminate its illegal occupation (IV).

I. Israel's Denial of the Palestinian People's Right of Self-Determination Renders Its Occupation of the OPT Illegal

3.5. Every Written Statement which addresses self-determination – 39 of all those received by the Court – recognises that it is a fundamental right possessed by the Palestinian people.³⁰⁴ This is true even of the Written Statements submitted by United States and Fiji, the only two States (apart from Israel) to argue that the Israeli occupation of the OPT is not unlawful. The **United States** speaks of “the full realization of Palestinian self-determination”³⁰⁵, and **Fiji** says “[t]here is no doubt that the Palestinian people have a right to self-determination ...”³⁰⁶

3.6. Some of the Written Statements do not address self-determination expressly, but still recognise the right of the Palestinian people to their own independent State in accordance with the two-State solution based on the 1967 borders.³⁰⁷ This is true, for example, of **Japan**.³⁰⁸ The right to statehood is necessarily premised on a right to self-determination. Therefore, it may be concluded that these States recognise the existence of the Palestinian people's right to self-determination.

³⁰⁴ Written Statements of Algeria, pp. 18-22; of the African Union, paras. 93 and 95-96; of Bangladesh, para. 27 and 29; of Belize, para. 16; of Bolivia, p. 8; of Brazil, paras. 18 and 24; of Chile, para. 83; of China, para. 45; of Cuba, p. 1; of Djibouti, p. 6; of Egypt, paras. 180-181; of Fiji, p. 7; of France, paras. 20 and 25; of the Gambia para. 1.5; of Guyana, paras. 26 and 29; of Indonesia, para. 25; of Ireland, para. 42; of Jordan, para. 4.10; of Kuwait, para. 3; of the League of Arab States, paras. 12 and 39; of Lebanon, para. 28; of Malaysia, para. 36; of Maldives, para. 34; of Mauritius, paras. 6 and 13; of Namibia, para. 122; of Norway, p. 3; of the Organisation of Islamic Cooperation, para. 219 and 241; of Oman, p. 2; of Pakistan, para. 3(b)(i); of Qatar, Vol. I, para. 3.4; of the Russian Federation, para. 70; of Saudi Arabia, para. 42 and 45; of South Africa, paras. 9, 50-51; of Switzerland, para. 25, 34 and 38; of Syria, para. 2 and 4; of the United Arab Emirates, para. 71; of the United Kingdom, para. 4; and of the United States of America, paras. 1.6 and 5.2.

³⁰⁵ Written Statement of the United States of America, paras. 1.6 and 5.2.

³⁰⁶ Written Statement of Fiji, p. 7.

³⁰⁷ Written Statements of Canada, para. 5; of Colombia, para. 5.4; of the Czech Republic, p. 1; of Hungary, para. 39; of Morocco, p. 1; of Norway, p. 2; of Spain, para. 4.1; of Türkiye, p. 13; and of Yemen, para. 42.

³⁰⁸ Written Statement of Japan, para. 2.

3.7. Whilst Israel does not explicitly or implicitly recognise the Palestinian people's right to self-determination in its Written Statement, it does not argue against the proposition that such right exists. As the Court noted in the *Wall* case, that right was recognised by Israel as long ago as 1993.³⁰⁹ Israel has not sought to contradict that finding in its Written Statement of 24 July 2023.

3.8. The Written Statement of the **African Union** reflects the overwhelming consensus on this issue:

“The Palestinians are a ‘people’ entitled to exercise the right to self-determination. As the ICJ stated in the *Wall Advisory Opinion*: ‘the existence of a “Palestinian people” is no longer in issue.’ Numerous resolutions adopted by the UN General Assembly and other UN bodies have also affirmed that the right to self-determination applies to the Palestinian People, which includes the right to establish their own independent and sovereign State.”³¹⁰

3.9. The significance of that right is summarised by **China** as follows:

“The right to self-determination occupies the primary position among the various human rights and lays down the foundation for other individual human rights. In other words, if a nation under colonial rule or foreign occupation cannot achieve self-determination, there will be no human rights of any individual of that nation to speak of.”³¹¹

3.10. **Malaysia** cites the repeated practice of the United Nations and the international community regarding the right to self-determination, recalling that the General Assembly, as early as its resolution 2649 (XXV) of 1970, condemned “those Governments that deny the right to self-determination of peoples recognized as being entitled to it, especially the peoples of Southern Africa and Palestine”³¹².

3.11. Many Written Statements recognise self-determination as a *jus cogens* norm. This is true of the written statements of: the African Union, Algeria, the Arab League, Bangladesh, Belize, Brazil, Chile, Cuba, Djibouti, Egypt, Gambia,

³⁰⁹ *Wall* Opinion, pp. 182-183, para. 118.

³¹⁰ Written Statement of the African Union, paras. 93-95 (footnotes omitted).

³¹¹ Written Statement of China, para. 41.

³¹² Written Statement of Malaysia, para. 37.

Guyana, Ireland, Jordan, Lebanon, Liechtenstein, Malaysia, Mauritius, Namibia, Pakistan, Qatar, Saudi Arabia, South Africa, and the United Arab Emirates.³¹³

3.12. Of the 36 Written Statements that address the issue of whether Israel's occupation of the OPT violates this peremptory norm, all but one (Fiji³¹⁴) concludes that it does. For example:

(a) **African Union:**

"Israel's occupation of the [OPT] qualifies as an internationally wrongful act of a continuing character on the ... grounds [*inter alia*, that it] ... violates the right of the Palestinian people to self-determination".³¹⁵

(b) **Belize:**

"Israel has set up 'institutional, coercive mechanisms', and established procedures and taken measures, that thwart the exercise of the Palestinian people's right to self-determination. Israel's policies and practices as a whole – and, in particular, those relating to the exercise of Israeli authority over the West Bank and Gaza ... and Israel's system of institutionalised discrimination and apartheid against Palestinians ... – thwart the exercise of the right to self-determination."³¹⁶

(c) **Chile:**

"It is clear from Israel's statements and actions that its violations of self-determination of the Palestinian people are the result of State policy, that precisely seeks to impede the Palestinians' ability to enjoy their natural wealth and resources, and the exercise of their political will."³¹⁷

³¹³ Written Statement of the African Union, para. 95 (footnotes omitted).

³¹⁴ Written Statement of Fiji, p. 5.

³¹⁵ Written Statement of the African Union, para. 91.

³¹⁶ Written Statement of Belize, para. 24.

³¹⁷ Written Statement of Chile, para. 96.

(d) Guyana:

“Israel’s violation of the right of the Palestinian people to self-determination is an inevitable consequence of its decades-long occupation and annexation of Palestinian territory.”³¹⁸

(e) Ireland:

“Today, Israel continues ever more seriously to breach its obligation to respect the right of the Palestinians to self-determination, through its maintenance and extension of the wall (now in existence for over twenty years), its formal annexation of East Jerusalem and its escalating settlement activity ... That escalating settlement activity increasingly fragments Palestinian presence on – and restricts Palestinian use of – land and natural resources in the Occupied Palestinian Territory, and its nature and scale is such that it completely prevents the Palestinian people from exercising their right to self-determination”.³¹⁹

(f) Jordan:

“The occupation has become an instrument to suppress the right of Palestinian people to self-determination, becoming indistinguishable from unlawful regimes such as colonial domination or apartheid.”³²⁰

(g) Lebanon:

“[L]e Liban considère qu’Israël viole tous les éléments constitutifs du droit du peuple palestinien à l’auto-détermination : qui sont (1) l’indépendance politique et économique (2) la souveraineté permanente sur les richesses et ressources naturelles, (3) l’intégrité territoriale.”³²¹

(h) Mauritius:

“[T]here is ample evidence to support the conclusion that Israel’s occupation of the OPT ... is an enduring and comprehensive ‘impediment

³¹⁸ Written Statement of Guyana, para. 31.

³¹⁹ Written Statement of Ireland, para. 43.

³²⁰ Written Statement of Jordan, para. 5.13.

³²¹ Written Statement of Lebanon, para. 32 (unofficial translation: “Lebanon considers that Israel is violating all the constituent elements of the Palestinian people’s right to self-determination, which are (1) political and economic independence, (2) permanent sovereignty over natural wealth and resources, (3) territorial integrity”).

to the exercise by the Palestinian people of its right to self-determination’.”³²²

(i) **Namibia:**

“[C]onsiders that Israel’s continued administration of the former Mandate of Palestine from the Mediterranean Sea to the Jordan River, which has been held on sacred trust for the indigenous Palestinian people, and its occupation of the Palestinian territory since 1967, denies the right of the Palestinian people as a whole to self-determination.

... [S]ubmits that Israel’s adoption of ‘discriminatory legislation and measures’ against Palestinians in the Occupied Palestinian Territory and Palestinian people, as a whole, amounts to the imposition of a system of apartheid, which also violates the right of the Palestinian people to self-determination among other fundamental rights and freedoms.”³²³

(j) **Qatar:**

“Accordingly, where an occupation is not of a minimal duration - *i.e.*, it is indefinite, prolonged, or permanent - that indefinite infringement of the right to self-determination renders the occupation in and of itself illegal.

Israel’s occupation of the OPT for more than 55 years indefinitely violates the right of the Palestinian people to self-determination and is therefore illegal as a whole.”³²⁴

(k) **Saudi Arabia:**

“[N]umerous measures carried out by Israel in the Occupied Palestinian Territory are not only in grave violation of its international obligations on their face, but at the same time they serve to systematically and severely impede the Palestinian people’s established right to self-determination. This is, in fact, the inevitable consequence of a settlement policy which, much like a colonial practice, is carried out in the very territory in which the Palestinian population lives and enjoys the right to self-determination,

³²² Written Statement of Mauritius, para. 22.

³²³ Written Statement of Namibia, para. 4 (emphasis in the original).

³²⁴ Written Statement of Qatar, paras. 4.10-4.11.

resulting in their displacement and seizure of their land, properties and resources to make way for Israeli settlers.”³²⁵

3.13. Israel’s unlawful denial of the Palestinian people’s right of self-determination is also recognised in many other Written Statements, including those of Algeria,³²⁶ Bangladesh,³²⁷ Bolivia,³²⁸ Brazil³²⁹, Cuba,³³⁰ Djibouti,³³¹ France,³³² the Gambia,³³³ Indonesia,³³⁴ Kuwait,³³⁵ the League of Arab States,³³⁶ Maldives,³³⁷ Malaysia³³⁸, Oman,³³⁹ the Organisation of Islamic Cooperation,³⁴⁰ Pakistan,³⁴¹ Senegal,³⁴² Syria,³⁴³ South Africa,³⁴⁴ Switzerland³⁴⁵ and the United Arab Emirates.³⁴⁶

3.14. As shown in Chapter 2 above, almost all these States and international organisations – and others³⁴⁷ – consider Israel’s occupation of the OPT illegal because of its permanent character, including Israel’s annexation and settlement of East Jerusalem and the West Bank, and its changes to the status, character and demography of Jerusalem. Examples include:

³²⁵ Written Statement of Saudi Arabia, para. 28.

³²⁶ Written Statement of Algeria, para. IV(2).

³²⁷ Written Statement of Bangladesh, paras. 26-28.

³²⁸ Written Statement of Bolivia, p. 4.

³²⁹ Written Statement of Brazil, para. 24 and 48.

³³⁰ Written Statement of Cuba, p. 6.

³³¹ Written Statement of Djibouti, para. 10.

³³² Written Statement of France, para. 36.

³³³ Written Statement of the Gambia, para. 1.5.

³³⁴ Written Statement of Indonesia, para. 24.

³³⁵ Written Statement of Kuwait, paras. 2-3.

³³⁶ Written Statement of the League of Arab States, para. 45-46.

³³⁷ Written Statement of the Maldives, para. 34.

³³⁸ Written Statement of Malaysia, para. 38.

³³⁹ Written Statement of Oman, p. 2.

³⁴⁰ Written Statement of the Organisation of Islamic Cooperation, Vol. I, para. 274.

³⁴¹ Written Statement of Pakistan, paras. 26-9.

³⁴² Written Statement of Senegal, p. 3.

³⁴³ Written Statement of Syria, para. 4.

³⁴⁴ Written Statement of South Africa, paras. 60-64.

³⁴⁵ Written Statement of Switzerland, para. 38.

³⁴⁶ Written Statement of the United Arab Emirates, para. 71.

³⁴⁷ See, for example, the Written Statements of Colombia, para. 4.7; of Türkiye, pp. 2, 7 and 13; and of Yemen, paras. 40-42.

(a) African Union:

“[T]he African Union invites the Court to conclude that the prolonged Israeli occupation of the Palestinian territories is, in itself, unlawful.

... UN organs have, on several occasions, affirmed that the Israeli occupation of the Palestinian territories is unlawful. Specifically, Israel’s occupation of those territories qualifies as an internationally wrongful act of a continuing character on the following grounds: a. *First*, the Israeli occupation of the Palestinian territories violates the right of the Palestinian people to self-determination; b. *Second*, Israel’s prolonged occupation of the Palestinian territories deprives the State of Palestine of its full sovereignty, further depriving the Palestinian people of their right to self-determination ...

Underlying the positions shared in this section is the contention that the Israeli occupation of the Palestinian territories is an internationally wrongful act that is distinct from the question of the wrongfulness of specific Israeli policies and practices in the occupied territories.”³⁴⁸

(b) Malaysia:

“[T]he occupation *as a whole* is illegal. First, the occupation as a whole is constituted by ... systemic practices in relation to territory, the unity and integrity of the people, the exploitation of resources, and the constraint on development. These practices are, as a matter of reality, the occupation itself. Second, the occupation as a whole has prevented and continues to prevent the Palestinian people from freely determining their political status, as protected by the right of self-determination ... Third, there exists no justification recognized by international law for Israel’s occupation of the territory of the Palestinian people. As was the case in relation to South Africa’s continued presence in Namibia ... Israel’s continued presence is illegal under international law.

In sum, the occupation as a whole is illegal under international law.”³⁴⁹

(c) Mauritius:

“[T]he Court should render an advisory opinion determining that: a. Through its illegal occupation of the OPT, Israel has violated, and is

³⁴⁸ Written Statement of the African Union, Vol. I, paras. 90-91.

³⁴⁹ Written Statement of Malaysia, paras. 62-63 (emphasis in the original).

continuing to violate, the right of the Palestinian people to self-determination. b. Israel is required to cease – immediately, completely and irreversibly – its occupation of the OPT. c. All States have a duty to ensure that Israel complies with its obligation to respect the right of self-determination of the Palestinian people, and its concomitant obligation to end its unlawful occupation of the OPT.”³⁵⁰

(d) South Africa:

“It is illegal for an occupying power to acquire occupied territory or to transform the status of the territory by creating irreversible facts on the ground so that the people of the territory would be precluded from eventually freely exercising their right self-determination at the end of the occupation.

.....

Against this background it is submitted that the Court should find that the prolonged Israeli belligerent occupation of the Occupied Palestinian Territory, including East Jerusalem, is illegal and an insurmountable barrier to the achievement of Palestinian self-determination.”³⁵¹

3.15. This position is echoed by many other submissions, including Bangladesh,³⁵² Belize,³⁵³ Guyana,³⁵⁴ Gambia,³⁵⁵ France,³⁵⁶ Jordan,³⁵⁷ the Organisation of Islamic Cooperation,³⁵⁸ Pakistan,³⁵⁹ and Syria³⁶⁰ all of whom argue that Israel’s occupation of the OPT violates the right of the Palestinian people to self-determination. Those States and international organisations rely upon the occupation’s broad geographic extent; prolonged nature; Israel’s forcible acquisition of Palestinian territory; its substantial manipulation of the demography of the OPT; the appropriation of natural resources; the systematic denial of basic

³⁵⁰ Written Statement of Mauritius, para. 23.

³⁵¹ Written Statement of South Africa, paras. 156 and 158.

³⁵² Written Statement of Bangladesh, paras. 30-31.

³⁵³ Written Statement of Belize, para. 19.

³⁵⁴ Written Statement of Guyana, paras. 32-34.

³⁵⁵ Written Statement of the Gambia, para. 1.7.

³⁵⁶ Written Statement of France, para. 81.

³⁵⁷ Written Statement of Jordan, paras. 5.3-5.4.

³⁵⁸ Written Statement of the Organisation of Islamic Cooperation, Vol. I, para. 241.

³⁵⁹ Written Statement of Pakistan, para. 22.

³⁶⁰ Written Statement of Syria, para. 30.

rights; the implementation of apartheid, the deliberate and calculated nature of Israel's conduct, or some combination of those characteristics for the conclusion that the occupation denies the Palestinian people their right of self-determination and is therefore illegal, as a whole, under general international law.

II. The Israeli Occupation Denies the Palestinian People their Right to Territorial Integrity and Fragments the Population into Separate Enclaves

3.16. Many of the Written Statements emphasize that a people's right of self-determination includes respect for the unity of the territory in which that right is to be exercised, and condemn as illegal Israel's dismemberment of that territory by (1) annexing East Jerusalem and large parts of the West Bank and populating these parts of Palestinian territory with hundreds of Israeli settlements and hundreds of thousands of Israeli settlers (as shown in Chapter 2 above); and (2) fragmenting the Palestinian population by dividing or fragmenting it into separate enclaves, disconnected from one another, and rendering a Palestinian State all but inviable. Many States and international organizations emphasise, as international law does, the centrality of territorial integrity for the realisation of self-determination:

(a) **Chile:**

“At the same time, the aforementioned policies have not only affected the Palestinians right of self-determination, and other basic human rights, but also constitute grave breaches of IHL, and in the specific case of the establishment of settlements, a war crime.”³⁶¹

(b) **China:**

“[T]he prolonged Israeli occupation, the establishment of settlements, the annexation of East Jerusalem and relevant discriminatory legislation, among other measures taken by Israel, have seriously impeded the realization of the right to self-determination of the Palestinian people ...”³⁶²

³⁶¹ Written Statement of Chile, para. 107 (footnote omitted).

³⁶² Written Statement of China, para. 45.

(c) **Cuba:**

“[The] right to self-determination is inextricably linked to the concept of territorial sovereignty. A people can only exercise the right to self-determination within a territory ...”³⁶³

(d) **France:**

“De ce point de vue, la poursuite de l’occupation mais aussi le développement de colonies de peuplement et le morcellement qui en découle, entravent l’édification d’un État de Palestine viable, dont la perspective s’éloigne au fur et à mesure que les atteintes à l’intégrité du territoire palestinien perdurent et s’amplifient.”³⁶⁴

(e) **Ireland:**

“Today, Israel continues ever more seriously to breach its obligation to respect the right of the Palestinians to self-determination, through its maintenance and extension of the wall (now in existence for over twenty years), its formal annexation of East Jerusalem and its escalating settlement activity, as described above ... the Palestinian people cannot exercise that right unless and until that settlement activity is reversed.”³⁶⁵

(f) **Malaysia:**

“[The] right to self-determination entails the right of the people to territorial integrity.”³⁶⁶

(g) **Mauritius:**

“[A]nnexation of territory is incompatible with the right to self-determination of the people within that territory.”³⁶⁷

³⁶³ Written Statement of Cuba, p. 6.

³⁶⁴ Written Statement of France, para. 30 (unofficial translation: “From this point of view, the continuation of the occupation, but also the development of colonial settlements and the resulting fragmentation, hinder the building of a viable State of Palestine, the prospect of which recedes as the attacks on the integrity of the Palestinian territory continue and intensify.”).

³⁶⁵ Written Statement of Ireland, para. 43.

³⁶⁶ Written Statement of Malaysia, para. 27.

³⁶⁷ Written Statement of Mauritius, para. 7.

(h) Qatar:

“The land is an essential component of Palestinian identity and the preservation of the territorial integrity of Palestine is an integral part of the people’s right to self-determination.”³⁶⁸

(i) Russian Federation:

“The policy of settlements has continued, with the number, the area and the population figures of those settlements constantly growing...They are thus also violating the right of the Palestinian people to self-determination.”³⁶⁹

(j) South Africa:

“The principle of self-determination is inextricably linked to the principle of territorial integrity.”³⁷⁰

3.17. Similar conclusions are reached by Namibia,³⁷¹ Bangladesh,³⁷² the League of Arab States,³⁷³ Syria,³⁷⁴ Egypt,³⁷⁵ Guyana,³⁷⁶ Saudi Arabia,³⁷⁷ Maldives,³⁷⁸ the United Arab Emirates,³⁷⁹ Pakistan,³⁸⁰ Gambia,³⁸¹ Belize,³⁸² Kuwait,³⁸³ Switzerland,³⁸⁴ Bolivia³⁸⁵ and Colombia.³⁸⁶ Each of those states argue that Israel’s *de jure* and *de facto* annexation of Palestinian territory through the

³⁶⁸ Written Statement of Qatar, Vol. I, para. 4.29 (footnotes omitted).

³⁶⁹ Written Statement of the Russian Federation, para. 73.

³⁷⁰ Written Statement of South Africa, para. 60.

³⁷¹ Written Statement of Namibia, para. 70.

³⁷² Written Statement of Bangladesh, para. 31.

³⁷³ Written Statement of the League of Arab States, para. 52.

³⁷⁴ Written Statement of Syria, para. 4.

³⁷⁵ Written Statement of Egypt, para. 225.

³⁷⁶ Written Statement of Guyana, para. 31.

³⁷⁷ Written Statement of Saudi Arabia, paras. 28 and 45-47.

³⁷⁸ Written Statement of Maldives, para. 35.

³⁷⁹ Written Statement of the United Arab Emirates, paras. 37 and 71.

³⁸⁰ Written Statement of Pakistan, paras. 28-29.

³⁸¹ Written Statement of the Gambia, paras. 1.3 and 1.5.

³⁸² Written Statement of Belize, paras. 21-22.

³⁸³ Written Statement of Kuwait, paras. 2-3.

³⁸⁴ Written Statement of Switzerland, para. 38.

³⁸⁵ Written Statement of Bolivia, p. 7-8.

³⁸⁶ Written Statement of Colombia, para. 4.11.

building of settlements, the confiscation of land and/or the *de jure* annexation of East Jerusalem violates the right to self-determination. That position is entirely consistent with the Court's conclusions in the *Wall* case.³⁸⁷

3.18. Further, as the State of Palestine demonstrated in its Written Statement, the occupation by Israel is not concerned with territorial acquisition alone. Israel is not content simply to acquire Palestinian land: it seeks also to diminish the number of Palestinians within it remain by undermining their rights under international law, including by coercing their departure through violent force and restrictions on movement and other measures aimed at making conditions unbearable, and denying them the capacity to sustain an independent State.³⁸⁸ To this end, Israel has exercised its control of the OPT to dismember not only the territory of the State of Palestine, but also the Palestinian population.

3.19. In particular, Palestinians in Gaza, in East Jerusalem and the West Bank, and in exile are denied access to one another. With Israel's splintering of the West Bank into cantons – or “Bantustans,” as South Africa puts it³⁸⁹ – the fragmentation of the Palestinian people has split them into ever smaller and more isolated units.

3.20. Israel's policy of fragmentation of the Palestinian people itself goes to the very heart of the occupation and its purpose. By denying the Palestinian people access to one another, Israel undermines the essence of their collective identity and existence.³⁹⁰ Israel acts, in other words, to ensure that only one people is able to exercise the right to self-determination within the entirety of historic Palestine: that is, Jewish Israelis. Indeed, this is exactly what Israel's “Jewish Nation State Law” provides.³⁹¹

3.21. The State of Palestine is not alone in drawing attention to Israel's dispossession and fragmentation of the Palestinian population, nor in recognising the ruinous impact that this has on Palestinian self-determination. This is the prolongation of a policy that started in 1948 and continues to this day with the aim of ensuring supremacy and territorial control for a single group – Jewish Israelis – over all the land between the Mediterranean Sea and the Jordan River. Namibia, a State whose people long suffered under both apartheid and foreign occupation

³⁸⁷ See *Wall* Opinion, p. 184, para. 122 and p. 199, para. 155.

³⁸⁸ Written Statement of the State of Palestine, paras. 3.99-3.117, 3.220-3.238, 5.49-5.85.

³⁸⁹ Written Statement of South Africa, para. 115.

³⁹⁰ Written Statement of the State of Palestine, paras. 5.41-5.48 and p. 368 (Submissions).

³⁹¹ Written Statement of the State of Palestine, para. 3.168 (c), referring to the Basic Law: Israel as the Nation-State of the Jewish People, 19 July 2018, Articles 1(c) and 7 (<https://tinyurl.com/fe5b4m7j>).

emphasised that aspect in its Written Statement. Given Namibia's particular historical perspective and authority on the subject, it is worth quoting at length:

“Since 1948, Israel has adopted laws, policies and practices aimed at fragmenting the Palestinian people. The Palestinian people have been divided into a number of administrative ‘domains’ or groups, with varying degrees of rights, with the purpose of separating and segregating the Palestinian domains from each other. This prevents the flourishing of the group, and in doing so denies the exercise of the Palestinian people its right to self-determination.

Israel (a) has denied Palestinian refugees, displaced persons and exiles their right to return to their homes, lands and properties since 1948 on the basis of their racial identity; (b) discriminations against the Palestinian citizens, for the benefit of Jewish nationals ... (c) controls the Palestinian people in the Occupied West Bank under law of occupation; (d) treats Palestinians in occupied East Jerusalem as ‘permanent residents’, a temporary and revocable residency status, and (e) treats the occupied Gaza strip as an ‘enemy entity’ with severe repercussions on the Palestinians living there.

This strategic formulation has two underlying objectives: first, it prevents Palestinians from collectively mobilizing against Israel's settler colonial enterprise; second, it ensures the continuation of the settler colonial enterprise by maintaining Israeli Jewish domination over the Palestinian people.”³⁹²

3.22. The same point has been argued by other States, including:

(a) **Belize:**

“Israel has also adopted measures designed to fragment the Palestinian people into separate and segregated territories and administrative regimes, seeking to prevent their full development as a people. In particular, different legal and administrative regimes govern Palestinians across different categories and territorial areas ... and severe restrictions on the movement of Palestinians operate to territorially segregate the Palestinian people across these areas, or exclude Palestinians altogether. Such legal fragmentation and territorial segregation ... constitutes a key tool through which Israel implements and enforces its oppression and domination of Palestine as a whole. This is because it allows Israel to more easily control and strip the Palestinian people of their rights, to separate and treat

³⁹² Written Statement of Namibia, paras. 64-66 (footnotes omitted).

Palestinians differently from Israeli Jews, and to separate Palestinians from each other in order to weaken ties between Palestinian communities and suppress sustained dissent against Israel and its system of oppression. These measures prevent the full development of the Palestinian people as a group and also contribute to the denial of their inalienable right to exercise fully their collective right to self-determination.”³⁹³

(b) Cuba:

“Israel not only seeks to destroy the clear territorial component of the State of Palestine ... but it carries out a policy destined to cause a negative impact on the second constituent element of every State, which is its population.”³⁹⁴

(c) Djibouti:

“Dès lors, en poursuivant une ‘occupation prolongée’, qui vise à être permanente, en menant activement une politique de colonisation, d’appropriation et de fragmentation du territoire, en adoptant des lois et des mesures ayant des effets d’annexion *de jure* ou *de facto*, la partie israélienne viole le principe du respect de l’intégrité du Territoire palestinien, dressant un obstacle grave à l’exercice par le peuple palestinien de son droit à l’auto-détermination.”³⁹⁵

(d) Ireland:

“[Israel’s] escalating settlement activity increasingly fragments Palestinian *presence on* – and restricts Palestinian use of – land and natural resources in the Occupied Palestinian Territory, and its nature and scale is such that it completely prevents the Palestinian people from exercising their right to self-determination; the Palestinian people cannot exercise that right unless and until that settlement activity is reversed.”³⁹⁶

³⁹³ Written Statement of Belize, para. 70 (footnotes omitted).

³⁹⁴ Written Statement of Cuba, pp. 21-22.

³⁹⁵ Written Statement of Djibouti, para. 19 (unofficial translation: “Consequently, by pursuing a ‘prolonged occupation’, which is intended to be permanent, by actively pursuing a policy of colonization, appropriation and fragmentation of the territory, by adopting laws and measures having *de jure* or *de facto* annexation effects, the Israeli party violates the principle of respect for the integrity of the Palestinian Territory, raising a serious obstacle to the exercise by the Palestinian people of its right to self-determination.”).

³⁹⁶ Written Statement of Ireland, para. 43.

(e) **Malaysia:**

“Israel has undertaken extensive practices aimed at changing the demographic composition of the [OPT], and has imposed policies that create enclaves of Palestinians, and fragment the Palestinian people ...

.....

Individually, and collectively, these measures and practices fracture the unity and integrity of the Palestinian people, violating their right to self-determination.”³⁹⁷

3.23. People and land are the essential prerequisites of a right to self-determination. Israel’s occupation is an attack upon both. If Israel cannot empty Palestine of Palestinians, it adopts policies and practices to ensure that those who remain are isolated from one another and confined to the smallest space possible in the pursuit of its objective: maximum Palestinian territory with minimum Palestinians. Israel’s efforts to undermine the integrity of the Palestinian people is a fundamental violation of the right to self-determination.

III. Israel’s Appropriation of the Natural Resources of the OPT Violates the Right of the Palestinian People to Self-Determination

3.24. There is a consensus in the Written Statements that the right of self-determination is inextricably linked to the right to permanent sovereignty over natural wealth and resources.³⁹⁸ This component of the right to self-determination was recognised as long ago as 1958.³⁹⁹ It was given definitive expression in the General Assembly’s declaration on the Right to Permanent Sovereignty over Natural Resources,⁴⁰⁰ and in Common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It has since become an accepted principle of general international

³⁹⁷ Written Statement of Malaysia, paras. 46-49.

³⁹⁸ See Written Statements of the African Union, para. 192; of Bangladesh, para. 28; of Belize, para. 19, fn. 33; of Bolivia, p. 7; of Brazil, para. 20; of Chile, 86; of China, para. 40; of Cuba, p. 6; of Egypt, para. 204; of France, paras. 31-32; of the Gambia, para. 1.7; of Guyana, para. 32; of Ireland, para. 43; of Jordan, para. 4.9; of Lebanon, para. 32; of Malaysia, para. 30; of Mauritius, para. 16; of Namibia, paras. 71, 149; of the Organisation of Islamic Cooperation, Vol. I, para. 237; of Syria, para. 13; of Qatar, Vol. I, para. 4.12; and of South Africa, paras. 47 and 90.

³⁹⁹ General Assembly, Resolution 1314 (XIII), 12 December 1958, preamble.

⁴⁰⁰ General Assembly, Resolution 1803 (XVII), 14 December 1962, preamble.

law.⁴⁰¹ Its applicability in relation to the OPT has been repeatedly recognised by the General Assembly.⁴⁰²

3.25. The Written Statements confirm this view, as well as Israel's obligation to refrain from appropriating, exploiting or diverting to itself or its settlers in the OPT the natural resources of the West Bank, including East Jerusalem, and, in relation to maritime resources, of the Gaza Strip. For example:

(a) Algeria:

“La spoliation des richesses naturelles des Palestiniens constitue une partie intégrante de la politique coloniale israélienne. En plus de son exploitation illégale des ressources halieutiques et gazières sur les côtes palestiniennes de Gaza, Israël continue à exploiter excessivement les ressources hydriques palestiniennes ou communes. Israël recourt aussi à la contamination par les eaux usées des côtes palestiniennes et des ressources souterraines, ce qui explique que 79 % de l'eau souterraine à Gaza n'est plus potable et que 30 % des maladies sont d'origine hydrique.”⁴⁰³

(b) Brazil:

“[T]he right to self-determination includes as a basic constituent the permanent sovereignty over natural wealth and resources, as set out in relevant General Assembly resolutions, including resolution 1803 (XVII) of 1962, entitled ‘Permanent sovereignty over natural resources’. The General Assembly has reiterated ‘the inalienable rights of the Palestinian people and of the population of the occupied Syrian Golan over their natural resources, including land, water and energy resources’ in many resolutions, including resolution 77/187, of 2022, entitled ‘Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East

⁴⁰¹ *Armed Activities on the Territory of the Congo, Judgment I.C.J Reports 2005*, p. 251, para. 244.

⁴⁰² See, e.g., General Assembly, Resolution 77/187, 14 December 2022, preamble and article 1.

⁴⁰³ Written statement of Algeria, p. 48 (unofficial translation: “The plundering of Palestinians’ natural resources is an integral part of Israel’s colonial policy. In addition to its illegal exploitation of fishery and gas resources on the Palestinian coast of Gaza, Israel continues to over-exploit Palestinian or common water resources. Israel also contaminates the Palestinian coastline and underground resources with sewage, which explains why 79 % of Gaza’s underground water is no longer drinkable, and why 30 % of diseases are water-borne.”).

Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources’.”⁴⁰⁴

(c) **Chile:**

“It is clear from Israel’s statements and actions that its violations of the right of self-determination of the Palestinian people are the result of a State policy, that precisely seeks to impede the Palestinians’ ability to enjoy their natural wealth and resources, and the exercise of their political will. Indeed, current Special Rapporteur Albanese has stated that the nature of the Israeli occupation is ‘that of an intentionally acquisitive, segregationist and repressive regime designed to prevent the realization of the Palestinian people’s right to self-determination’.”⁴⁰⁵

(d) **France:**

“Le droit du peuple palestinien à l’autodétermination comporte également une dimension économique, que l’Assemblée générale a mise en lumière en consacrant le principe de souveraineté permanente sur les ressources et les richesses naturelles, dont la Cour a ultérieurement consacré le caractère coutumier. Dans la résolution 1803 (XVII), l’Assemblée déclare ainsi que ‘le droit de souveraineté permanent des peuples et des nations sur leurs richesses et leurs ressources naturelles doit s’exercer dans l’intérêt du développement national et du bien-être de la population de l’État intéressé’.

Au regard du respect de ce droit, Israël doit s’abstenir de tout acte qui aurait pour effet d’exploiter, d’altérer, de détruire, d’épuiser et de mettre en péril les ressources et les richesses naturelles du territoire palestinien occupé.”⁴⁰⁶

⁴⁰⁴ Written Statement of Brazil, para. 20.

⁴⁰⁵ Written Statement of Chile, pp. 30-31, para. 96 (footnote omitted).

⁴⁰⁶ Written Statement of France, paras. 31-32 (unofficial translation: “The Palestinian people’s right to self-determination also has an economic dimension, which the General Assembly highlighted by enshrining the principle of permanent sovereignty over natural resources and wealth, the customary nature of which was subsequently confirmed by the Court. In resolution 1803 (XVII), the Assembly declared that ‘the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned’. In order to respect this right, Israel must refrain from any action which would result in the exploitation, alteration, destruction, depletion or endangerment of the natural resources and wealth of the Occupied Palestinian Territory.”).

(e) Jordan:

“[S]elf-determination is closely related to the right of all peoples to permanent sovereignty over their natural wealth and resources [and] the right of the Palestinian people to permanent sovereignty over the Palestinian territory’s natural resources was recognized by the General Assembly, the ECOSOC and the Human Rights Council.”⁴⁰⁷

(f) Lebanon:

“La politique israélienne de confiscation des territoires agricoles, d’exploitation des ressources hydrauliques et minières des Territoires palestiniens occupés est une violation continue du deuxième élément constitutif du droit à l’autodétermination, qui est la souveraineté permanente des peuples sur leurs ressources naturelles.”⁴⁰⁸

(g) Malaysia:

“Israel is undertaking a range of practices that impede the right of the Palestinian people to permanent sovereignty over their natural resources”⁴⁰⁹ such as the expropriation of Palestinian land, the appropriation, and/or destruction, of the Palestinian water infrastructure, and the exploitation of quarries producing rock, gravel and minerals, as well as through the granting of licences for oil and gas extraction.⁴¹⁰

“Israel’s ongoing practices of this kind infringe the right of the Palestinian people to permanent sovereignty over their natural wealth and resources, and therefore violate the right of the Palestinian people to self-determination”.⁴¹¹

(h) Namibia:

“The right to self-determination encompasses sovereignty over natural resources and wealth, most of which has been unlawfully appropriated,

⁴⁰⁷ Written Statement of Jordan, paras. 4.9-10 (footnotes omitted).

⁴⁰⁸ Written Statement of Lebanon, para. 33 (footnote omitted) (unofficial translation: “Israel’s policy of confiscating agricultural land and exploiting the water and mineral resources of the Occupied Palestinian Territories is an ongoing violation of the second component of the right to self-determination, which is the permanent sovereignty of peoples over their natural resources”).

⁴⁰⁹ Written Statement of Malaysia, para. 50.

⁴¹⁰ See *ibid.*, paras. 51-53.

⁴¹¹ *Ibid.* para. 55.

exploited, depleted and pillaged by the Occupying Power – oftentimes together with Israeli and multinational private and corporate actors.”⁴¹²

(i) Organisation of Islamic Cooperation:

“Pour ce qui est des richesses naturelles, le droit à l’autodétermination se double d’une composante économique, le droit des peuples sur leurs ressources naturelles. Ce droit a été affirmé en 1962 par la résolution de l’Assemblée générale 1803. Il est considéré comme un élément fondamental du droit des peuples à disposer d’eux-mêmes. Son rôle est de préserver les droits futurs du peuple dominé et d’empêcher une spoliation anticipée par la colonisation.”⁴¹³

(j) South Africa:

“[S]elf-determination has both a political and an economic component: the capacity of a people to freely determine their political status, to choose its own government and govern itself without interference, and the collective right to freely pursue their economic, social and cultural development and enjoy their natural wealth and resources.

.....

Successive Israeli governments have for a prolonged period of time established, maintained and expanded settlements and their concomitant infrastructure. All these policies and practices have subsequently resulted in the extensive appropriation of Palestinian land and natural resources.”⁴¹⁴

3.26. Such conclusions are echoed in the Written Statements of many other States and international organisations.⁴¹⁵ In short, the Written Statements confirm that Israel is under an obligation to respect the right of the Palestinian people to permanent sovereignty over their natural wealth and resources, and that it has

⁴¹² Written Statement of Namibia, para. 149.

⁴¹³ Written Statement of the Organisation of Islamic Cooperation, Vol. I, para. 238 (footnote omitted) (unofficial translation: “As far as natural resources are concerned, the right to self-determination is coupled with an economic component, the right of peoples to their natural resources. This right was affirmed in 1962 by General Assembly resolution 1803. It is considered a fundamental element of the right of peoples to self-determination. Its role is to preserve the future rights of the dominated people, and to prevent anticipated spoliation through colonization”).

⁴¹⁴ Written Statement of South Africa, paras. 47 and 76 (footnotes omitted).

⁴¹⁵ Written Statements of Jordan, paras. 422-23; of Ireland, para. 16; of the League of Arab States, para. 142; and of Mauritius, para. 16.

continuously and persistently violated that obligation through its policies and measures in relation to the resources of the OPT. The Written Statements before the Court provide ample support for that conclusion.

IV. The Legal Consequences of Israel's Denial of the Palestinian People's Right of Self-Determination

3.27. The broad consensus concerning the legal consequences of Israel's illegal occupation and annexation of the OPT is accompanied by an equally broad consensus regarding the legal consequences resulting from Israel's violations of the Palestinian people's right to self-determination. States and international organisations have devoted a large part of their Written Statements to these specific consequences. Those submissions provide strong support for the State of Palestine's position concerning the legal consequences of those violations for Israel (A), for other States (B) and for the United Nations (C).

A. LEGAL CONSEQUENCES FOR ISRAEL

1. The Obligation to Cease Its Denial of the Palestinian People's Right to Self-Determination

(a) The Obligation to Cease Its Wrongful Conduct

3.28. As noted above, a large number of States and international organisations have extensively documented Israel's past and ongoing violations of the Palestinian people's right to self-determination.⁴¹⁶ At the same time, a large number of the Written Statements also stress the continuing importance of the Palestinian people's right to self-determination and the necessity and obligation to assist the Palestinian people in its realization, underscored in some Written Statements, including those of the African Union and Mauritius, as a "sacred trust".⁴¹⁷ Consequently, many participants in these advisory proceedings have explicitly stressed Israel's obligation to cease forthwith its violations of the Palestinian people's right to self-determination.⁴¹⁸

⁴¹⁶ See above paras. 3.5-3.15.

⁴¹⁷ Written Statements of the African Union, paras. 217(e), 261; of Mauritius, para. 6; of Namibia, paras. 145-147.

⁴¹⁸ See, e.g., Written Statements of Maldives, para. 52; of France, para. 34 and para. 85; of Qatar, Vol. I, paras. 5.6-5.10; of Namibia, para. 151 (g); and of China, para. 49.

3.29. As France explains, the obligation to cease those violations “s’impose d’autant plus que la réalisation du droit à l’autodétermination ‘est une condition essentielle à la garantie et au respect effectifs des droits humains ainsi qu’à la préservation et à la promotion de ces droits’.”⁴¹⁹ The importance of cessation is further reinforced by the fact that, as South Africa notes, one of the United Nations’ foundational objectives set out in Article 1(2) of the United Nations Charter is precisely “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take appropriate measures to strengthen universal peace”⁴²⁰. The existence of ongoing and flagrant violation of the right to self-determination is anathema to those objectives.

3.30. While the United States errs in several respects in its interpretation of the *Wall* Opinion and its relevance in delimiting the scope of the Court’s competence in the present case, it rightly calls attention to the relevance of that Opinion in respect of the legal consequences for Israel of its infringements of the Palestinian people’s right to self-determination:

“Of note in this regard, the Court reached conclusions in that proceeding on the legal consequences of settlement activity, actions that alter the demographic composition, character and status of the Occupied Palestinian Territories – including East Jerusalem, and policies and practices that hinder the exercise of the Palestinian right to self-determination. The Court urged an end to all such violations it identified, and, as relevant, reparations. *See Construction of a Wall, Advisory Opinion*, 2004 I.C.J. at 184, 201-02, ¶¶ 120-22, 163.”⁴²¹

3.31. The obligation to cease violating the Palestinian people’s right to self-determination imposes on Israel the duty to recognise the entitlement of the Palestinian people– like all other peoples – to the exercise of their right to self-

⁴¹⁹ Written Statement of France, para. 34 (quoting A/RES/56/83, 12 décembre 2001, para. 1) (unofficial translation: “is all the more imperative since the realisation of the right to self-determination ‘is an essential condition for the effective guarantee and respect for human rights, as well as for the preservation and promotion of those rights’.”).

⁴²⁰ See, e.g., Written Statements of South Africa, para. 47; of Jordan, para. 4.7; of Pakistan, para. 20; and of China, para. 36.

⁴²¹ Written Statement of the United States of America, p. 23, fn. 65.

determination,⁴²² which necessarily results in the independence of the State of Palestine.⁴²³

3.32. Indeed, in addition to cessation, Israel is obliged to comply with all the obligations it has breached.⁴²⁴ Egypt affirms in its Written Statement, “[t]hese obligations encompass Israel’s obligation to give effect to the right to self-determination by ending the occupation.”⁴²⁵ Moreover, as the Written Statements of numerous States and organisations explain, the general duty to stop violating the right to self-determination of the Palestinian people also imposes a number of very concrete duties on Israel, including obligations:

- to repeal all laws and regulations impeding the exercise of that right;⁴²⁶
- to cease the administration of the OPT (as emphasised in particular by the Maldives, referring to the *Chagos* Opinion);⁴²⁷
- to stop the demographic alteration of the Palestinian territory⁴²⁸ including in East Jerusalem;⁴²⁹

⁴²² Written Statement of Belize, para. 76.

⁴²³ Written Statement of Lebanon, para. 56. See also the Written Statement of Cuba, notably pp. 12 and 18, and Written Statement of the African Union, para. 209, considering Israel’s recognition of the State of Palestine as a guarantee of non-repetition.

⁴²⁴ See Article 29 of the Articles on State Responsibility, which reads: “The legal consequences of an internationally wrongful act under this part do not affect the continued duty of the responsible State to perform the obligation breached”.

⁴²⁵ Written Statement of Egypt, para. 298.

⁴²⁶ Written Statement of Belize, para. 76; of the League of Arab States, para. 108; of Malaysia, para. 67; and of Egypt, para. 326, g, 1.

⁴²⁷ Written Statement of Maldives, para. 46. See also the Written Statements of Belize, para. 76 or of South Africa, paras. 143-144.

⁴²⁸ Written Statements of South Africa, paras. 143-144; of Belize, para. 77; and of the League of Arab States, para. 108.

⁴²⁹ Written Statements of the League of Arab States, para. 108; of Qatar, Vol. I, para. 5.9; of Belize, para. 76; and of France, paras. 81 and 85.

- to cease the exploitation of natural resources belonging to the Palestinian people⁴³⁰ – including in their maritime areas,⁴³¹ as well as concerning the use of water resources;⁴³² and
- to put an end to obstacles which impede the Palestinian people returning to their land.⁴³³

(b) Assurances and Guarantees of Non-Repetition

3.33. The need for assurances and guarantees of non-repetition mentioned by the State of Palestine in its Written Statement⁴³⁴ is widely recognised by other States and international organisations in view of the scale and magnitude of Israel’s infringements of the Palestinian people’s right to self-determination. As **Lebanon** explains:

“Israël commet une violation grave du droit international public selon la définition de l’article 40 du projet d’articles sur la responsabilité de l’État pour fait internationalement illicite, ces violations étant systématiques et continues. Israël est tenu de cesser ces actes illicites et d’offrir des assurances de non répétition selon l’article 30 du projet d’articles sur la responsabilité des États.”⁴³⁵

3.34. Among the factors establishing the need to adopt assurances and guarantees of non-repetition, Qatar notes that “[t]he ILC has expressed the view that, in addition to the risk of repetition, the nature of the obligation(s) breached and the gravity of the breach(es) are also factors that should be considered in determining if the circumstances require assurances and guarantees of non-

⁴³⁰ Written Statements of Belize, para. 77; and of Malaysia, paras. 50-55 and 67(b).

⁴³¹ See, e.g., Written Statement of Belize, para. 56(c)(ii); Written Statement of Algeria, p. 48; Written Statement of the African Union, para. 172.

⁴³² Written Statement of Malaysia, paras. 52 and 67(b); of Namibia, para. 71 quoting “CESCR, Concluding Observations on the Fourth Periodic Report of Israel, 12 November 2019, E/C.12/JSR/C0.4, para. 47.”; and of the African Union, para. 203.i.

⁴³³ Written Statement of the League of Arab States, para. 108.

⁴³⁴ Written Statement of the State of Palestine, paras. 7.28-7.31.

⁴³⁵ Written Statement of Lebanon, para. 55 (unofficial translation: “Israel is committing a serious breach of public international law as defined in Article 40 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, these breaches being systematic and continuous. Israel is obliged to cease these unlawful acts and to offer assurances of non-repetition in accordance with Article 30 of the Draft Articles on State Responsibility.”). See also, e.g., in the same Written Statement, para. 56; or Written Statements of Egypt, para. 306; and of Brazil, paras. 50-51.

repetition.”⁴³⁶ In this respect, there can be few (if any) international situations that have presented such great risks of repetition of violations of international law as exist in the context of Israel’s decades-long violation of the right to self-determination of the Palestinian people.

3.35. The thinly veiled threats made by Israel – which asserts in its Written Statement that the questions put to the Court “can only push the parties further apart rather than help create conditions to bring them closer together”⁴³⁷ – and the defiant measures adopted by Israel following the request for an advisory opinion⁴³⁸, heighten the need for concrete assurances and guarantees of non-repetition of breaches of the right of the Palestinian people to self-determination. As **Brazil** observes, “[t]hese assurances could take the form, *inter alia*, of official declarations, international commitments, and legislative and administrative measures”⁴³⁹. As the **African Union** explains, such assurances could also be realized through recognition of the State of Palestine and renunciation of any claims to title of a legal or historical nature to the Palestinian territory.⁴⁴⁰

2. *The Obligation to Make Reparation for the Damage Caused by Israel’s Denial of the Palestinian People’s Right to Self-Determination*

(a) *Restitution*

3.36. Many of the Written Statements contend that Israel’s obligation to make reparation for the damage caused by its violation of the Palestinian people’s right to self-determination should take the form, first and foremost, of an obligation to return to the Palestinian people and to the State of Palestine the territory which Israel has occupied for more than half a century.⁴⁴¹ The obligation to return that territory to the State of Palestine is inseparable from the obligation to return to individual Palestinians their private property which was confiscated or stolen by Israel or its nationals.⁴⁴² These specific restitutionary measures are an essential part

⁴³⁶ Written Statement of Qatar, Vol. I, para. 5.15 mentioning “ILC, *Report of the International Law Commission on the work of its fifty-second session (2000)*, UN Doc. A/CN.4/513 (15 Feb. 2001), para. 57.”

⁴³⁷ Written Statement of Israel, p. 4.

⁴³⁸ Written Statement of the African Union, para. 28. In this respect, see above paras. 8-14.

⁴³⁹ Written Statement of Brazil, para. 51. See also Written Statement of the African Union, para. 209.

⁴⁴⁰ Written Statement submitted by the African Union, para. 209.

⁴⁴¹ Written Statement of Malaysia, para. 67.

⁴⁴² *Ibid.* See also Written Statement of Belize, para. 80.

of Israel's overarching obligation to re-establish the situation which existed before the breaches of the right to self-determination occurred.⁴⁴³

3.37. The obligation of full restitution also entails returning resources that were unlawfully expropriated and exploited by Israel. **Egypt**, citing many resolutions from various international organisations, emphasizes

“the right of the Arab States and peoples whose territories are under Israeli occupation to the *restitution of and full compensation* for the exploitation and looting of, and damages to, the natural resources, as well as the exploitation and manipulation of the human resources, of the occupied territories.”⁴⁴⁴

3.38. Lebanon, referring to the Court's Opinion in the *Wall* case, similarly emphasizes Israel's obligation to restore “les terres, les vergers, les oliveraies et les autres biens immobiliers saisis à toute personne physique ou morale ...”⁴⁴⁵.

3.39. Furthermore, as Qatar correctly points out, the obligation of restitution is not confined to restoration of land and property; it also entails a duty to

“facilitat[e] the return of Palestinians whom Israel forcibly displaced ... It is of course not possible for Israel to compel all those whom it forcibly displaced to return to their homes. But it must do everything within its power to facilitate that return should the victims wish to come back.”⁴⁴⁶

(b) *Compensation*

3.40. In addition to restitution, Israel must financially compensate the Palestinian people as a whole for the damage caused by the violation of their right

⁴⁴³ Written Statement of the State of Palestine, para. 7.60.

⁴⁴⁴ Written Statement of Egypt, para. 315, quoting: “UN. General Assembly Resolution 3175 (XXVIII), “*Permanent Sovereignty over National Resources in the Occupied Arab Territories*”, A/RES/3175 (XXVIII) of 17 December 1973), para. 3” (emphasis added by Egypt).

⁴⁴⁵ Written Statement of Lebanon, para. 56 quoting: “*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, I.C.J. Reports 2004, p. 66, para. 153” (official translation: “the land, orchards, olive groves and other immovable property seized from any natural or legal person”). Lebanon adds the specification that this obligation applies to property seized “en vue de l'implantation des colonies” (unofficial translation: “with a view to the establishment of colonies”); this limitation does not appear in the text of the Opinion.

⁴⁴⁶ Written Statement of Qatar, Vol. I, para. 5.20. See also Written Statement of Belize, para. 80.

to self-determination.⁴⁴⁷ This reparation is due to Palestinian society as a whole and is without prejudice to the right of individual Palestinians to be compensated for damage suffered individually.⁴⁴⁸

3.41. Several States and international organisations agree that this compensation should cover, in particular, reparation for the damage caused to the property of displaced Palestinians and their descendants, including the destruction of their homes and fields.⁴⁴⁹ It should also compensate for Israel's pillage of the natural resources of the Palestinian people⁴⁵⁰ and, more generally, the systemic deprivation of their right to freely pursue their economic, social, and cultural development and to choose their political, economic and social organisation.⁴⁵¹

3.42. In terms of the modalities for providing and distributing compensation, bilateral agreements could be concluded with a view to establishing a fund to compensate the Palestinian people for the damage caused to their right to self-determination.

(c) Satisfaction

3.43. In addition to restitution and compensation, many States also refer to Israel's obligation of satisfaction. The need for satisfaction is highlighted in particular by Belize, which correctly explains that:

“Given that Israel's conduct has breached some of the most important norms of international law, spanned more than half a century and adversely affected successive generations of Palestinians, this is a case in which restitution and compensation are inadequate to fully repair the injury suffered, in particular the moral damage occasioned to Palestine and its people. Satisfaction is accordingly a necessary form of reparation. Israel

⁴⁴⁷ On the secondary nature of compensation, see Written Statements of Namibia, para. 129.a.; of Qatar, Vol. I, para. 5.22; of the League of Arab States, para. 154, quoting from the “*Wall Advisory Opinion* (2004), p. 198, para. 153.”

⁴⁴⁸ See below, paras. 4.64-4.66.

⁴⁴⁹ Written Statements of Malaysia, para. 67 (b); of Belize, para. 80; of Namibia, paras. 132, 137.

⁴⁵⁰ Written Statements of Malaysia, para. 67 (b); of Brazil, para. 56; of Belize, para. 80; of Qatar, Vol. I, para. 5.28; and of Namibia, paras. 132, 137.

⁴⁵¹ Written Statements of Namibia, para. 132; and of Malaysia, para. 67 (b).

should therefore acknowledge that its conduct violates international law and issue a formal apology to the Palestinian people.”⁴⁵²

B. LEGAL CONSEQUENCES FOR ALL OTHER STATES

3.44. Besides the illegality of the occupation and annexation of Palestinian territory in and of themselves, Israel’s policy of systematically violating the right of the Palestinian people to self-determination carries with it a number of legal consequences for third States. In particular, as the State of Palestine explained in its first Written Statement, States are obliged not to recognise the situation resulting from the violation of the Palestinian people’s right to self-determination (1), not to give aid or assistance to Israel in its policy of denying the Palestinian people’s right to self-determination (2) and, positively, to cooperate with a view to ensuring the early realization of this right and putting an end to Israel’s violations of international law (3).⁴⁵³

1. The Obligation of Non-Recognition

3.45. The first obligation imposed on States other than Israel is not to recognise the situation resulting from Israel’s violation of the Palestinian people’s right to self-determination.⁴⁵⁴ In this regard, ^{Malaysia} correctly explains that, “[t]he duty not to recognize the situation created by Israel’s serious breach of the right to self-determination requires all States to refrain from any act that grants or implies recognition of the legality of the situation ... This requires that all States refrain from any acts that grant or imply recognition of Israel’s illegal claims to territory, the previous and continued establishment of settlements, the exploitation of natural resources, and other economic activities connected with the breach of the Palestinian people’s right to self-determination.”⁴⁵⁵ As several other States point

⁴⁵² Written Statement of Belize, para. 81 (footnotes omitted). See also Written Statements of Egypt, para. 317; of Brazil, para. 557; of the League of Arab States, para. 155; and of Indonesia, Chapter V. “All States and the United Nations Must Not to Recognize the Illegal Situation Resulted from Israel’s Violation of the Right of the Palestinian People to Self-determination” and see Conclusion and Submission, para. 68 (f) (1).

⁴⁵³ Written Statement of the State of Palestine, paras. 7.109-7.123, 7.127-7.162.

⁴⁵⁴ See, e.g., Written Statements of Qatar paras. 5.39-5.43; of France, paras. 91-93; of Belize, para. 95(a); of Brazil, paras. 59-63; of Egypt, para. 321 a.; of Pakistan, para. 107; and of South Africa, paras. 152-153.

⁴⁵⁵ Written Statement of Malaysia, paras. 70-71.

out, it also entails a duty not to recognise changes in the status and demographic situation of Jerusalem.⁴⁵⁶

3.46. Furthermore, the duty of non-recognition implies a prohibition on recognising as legitimate the situation resulting from Israel's construction of the Wall,⁴⁵⁷ which undermines the territorial integrity of the Palestinian people. It also obliges States to refrain from concluding trade agreements with Israel which are likely to strengthen Israel's control over the OPT, particularly as regards products from illegal Israeli settlements in the occupied territory. As **Ireland** points out:

“Customary international law, as reflected by Article 41 of the Draft Articles, also obliges states not to recognise as lawful the situation created by this breach, either formally or by acts which would imply such recognition. In its advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, the Court explained the types of acts that would impermissibly imply recognition of the unlawful situation in that case (namely, South Africa's presence in the previously-mandated territory of Namibia following termination of the mandate), and found that the duty of non-recognition obliged states, *inter alia*, ‘to abstain from entering into economic and other forms of relationship or dealings with South Africa ... which may entrench its authority over the [territory of Namibia]’.”⁴⁵⁸

2. *The Obligation Not to Contribute to the Denial of the Palestinian People's Right to Self-Determination*

3.47. The obligation not to aid or assist Israel in its breaches of the Palestinian people's right to self-determination is addressed at length in the Written Statements submitted to the Court.⁴⁵⁹ By way of example, the **African Union** notes that:

“Under customary international law, as reflected in Article 41(2) of the Articles on State Responsibility, states have a duty not to ‘recognize as lawful a situation created by a serious breach [of a peremptory norm], nor render aid or assistance in maintaining that situation.’ Both the prohibition on the acquisition of territory by force and the right of self-determination,

⁴⁵⁶ Written Statement of Lebanon, para. 62. See also Written Statement of China, para. 51; and of Egypt, para. 321 (a).

⁴⁵⁷ Written Statement of Maldives, para. 45(d); and of Jordan, para. 4.180.

⁴⁵⁸ Written Statement of Ireland, para. 53. See also Written Statement of Djibouti, para. 70.

⁴⁵⁹ Written Statements of Kuwait, para. 35; of Maldives, para. 45, (d); of the League of Arab States, paras. 196-197; of Algeria p. 56; and of Jordan, para. 4.185.

not to mention the prohibition of apartheid, qualify as peremptory norms.”⁴⁶⁰

3.48. As **Cuba** points out, Article 2(5) of the Charter of the United Nations also refers to the obligation not to aid or assist a State in the commission of an internationally wrongful act – in this case, the numerous Israeli violations of the Palestinian people’s right to self-determination. Cuba therefore rightly explains that:

“The International Court of Justice should emphasize the scope of Article 2.5 of the Charter, which states that all members ‘*shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.*’ This entails the obligation of all States to abide by the decisions adopted by the Organization as a whole ...”⁴⁶¹

3.49. As the **African Union** makes clear, the obligation not to aid or assist Israel in its infringements of the Palestinian people’s right to self-determination entails in particular the obligation for

“all States [to] refrain from acts and conduct that could, directly or indirectly, contribute to the unlawful situation in Palestine. Such acts or conduct could include support provided to Israel directly, or to the settlers that contribute to the fragmentation of the West Bank, includ[ing] support provided through economic ties and commercial agreement; it also includes acts and conduct conducive to the normalisation of a situation that is and remains thoroughly illegal, such as any engagement with Israel’s military activities.”⁴⁶²

3.50. To similar effect, **Saudi Arabia** explains that States must:

“Abstain from entering into economic and other forms of relationship or dealings with Israel on behalf of or concerning the Occupied Palestinian

⁴⁶⁰ Written Statement of the African Union, para. 217, a. Among the many States and international organizations that have relied on the customary rule mentioned in article 41 of the Articles on State Responsibility, see Written Statements of Namibia, para. 135; of Pakistan, paras. 100-101; and of the United Arab Emirates, para. 93.

⁴⁶¹ Written Statement of Cuba, p. 28 (emphasis added by Cuba).

⁴⁶² Written Statement of the African Union, para. 224. See also Written Statements of Kuwait, para. 35; of Qatar, Vol. I, para. 5.48.

Territory, including East Jerusalem, which may entrench its authority over the occupied territories.”⁴⁶³

3.51. As the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, quoted by Saudi Arabia, explains, this also requires States:

“[T]o take all reasonable steps to prevent or discourage national institutions, organizations and corporations within their jurisdiction from engaging in activities that would invest in, or sustain, the occupation.

[To] prevent or discourage cooperation with entities that invest in, or sustain, the occupation.

[T]o review ... various forms of cooperation with the occupying power as long as it continues to administer the occupation unlawfully.”⁴⁶⁴

3.52. Turning to the specific issue of the military support that contributes to Israel’s undermining of the Palestinian people’s right to self-determination, **Qatar** notes that:

“the UN General Assembly has already called upon all Member States to refrain from supplying Israel with and acquiring from Israel military equipment, and to suspend any military assistance agreements with Israel. In light of the heavily militarized nature of the occupation, any form of military cooperation with Israel necessarily renders aid or assistance in maintaining the situation created by Israel’s illegal conduct. The Court should therefore hold in the *dispositif* that States must refrain from selling or delivering to Israel weapons, ammunition, military vehicles, military equipment, security equipment, paramilitary equipment, or any spare parts for the aforementioned items. In the alternative, States are at the very least prohibited from selling or delivering to Israel any form of military or security equipment without a clear end-use undertaking that such equipment will neither be used in the OPT nor deployed to facilitate Israel’s continued occupation.”⁴⁶⁵

⁴⁶³ See Written Statement of Saudi Arabia, para. 84. See also Written Statements of Chile, para. 122; and of Belize, para. 84 (d).

⁴⁶⁴ Written Statement of Saudi Arabia, para. 83.

⁴⁶⁵ Written Statement of Qatar, Vol. I, para. 5.49. See also Written Statement of Namibia, para. 138.

3.53. Question (b) submitted to the Court can be answered only by taking full account of the provisions of Article 41 of the Articles on State Responsibility, which draw the consequences from serious breaches by a State of an obligation arising under a peremptory norm of general international law – which, is undoubtedly the case of the Israeli violations of the principle of the right of peoples to self-determination and of the rules and principles resulting therefrom. It should also be recalled in this regard that the ILC itself recognised that the consequences exposed in Article 41 are without prejudice to the other consequences of this kind of breaches.⁴⁶⁶

3. The Obligation to Cooperate to End the Denial of the Palestinian People's Right to Self-determination

3.54. States other than Israel also have the obligation to adopt positive measures to put an end to the violation of the right to self-determination of the Palestinian people. As Yemen puts it, they have the obligation to “to cooperate to effectively ensure and protect the rights of the Palestinian people and to end Israeli violations of those rights”⁴⁶⁷.

3.55. This obligation under customary international law has been widely reiterated by the United Nations, as **Switzerland** highlights:

“À titre d'exemple, dans la résolution sur le *Statut de la Palestine à l'Organisation des Nations Unies*, l'Assemblée générale :

‘Exhorte tous les États, ainsi que les institutions spécialisées et les organismes du système des Nations Unies, à continuer de soutenir le peuple palestinien et de l'aider à réaliser rapidement son droit à l'autodétermination, à l'indépendance et à la liberté’.”⁴⁶⁸

⁴⁶⁶ Articles on States Responsibility, Article 41 (3). See below, paras. 3.44-3.53.

⁴⁶⁷ Written Statement of Yemen, para. 43.c. See also Written Statements of Ireland, para. 52; of Kuwait, para. 35; of Pakistan, para. 96; of Indonesia, paras. 63 and 67; of Egypt, para. 326, h.; of South Africa, para. 150; of Mauritius, para. 22.

⁴⁶⁸ Written Statement of Switzerland, para. 33, quoting “General Assembly Resolution 67/19, Status of Palestine at the United Nations, A/RES/67/19 » (29 November 2012) For example, in the resolution on the Status of Palestine at the United Nations, the General Assembly: “Urges all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination, independence and freedom”. See also Written Statement of the African Union, para. 233.

3.56. This call upon all States and the specialized agencies and organisations of the United Nations system to support and assist the Palestinian people in the realization of their right to self-determination is also reaffirmed explicitly and annually in the General Assembly resolution on the *Right of the Palestinian people to self-determination*, most recently adopted as resolution 77/208 on 15 December 2022, which receives almost universal support.⁴⁶⁹ Moreover, the Human Rights Council, in its resolution on the Right of the Palestinian people to self-determination, explicitly “*Urges* all States to adopt measures to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right”.⁴⁷⁰ Indeed, enabling peoples to fully realise their right to self-determination is provided for in the United Nations Charter, which states that States shall “take joint and separate action in co-operation” to make this right a reality.⁴⁷¹

3.57. This obligation to cooperate can take different forms and, as Malaysia notes, can take place through different forums “including through the United Nations and regional organizations, as well as *ad hoc*, non-institutionalized cooperation to bring to an end Israel’s breach of the Palestinian people’s right to self-determination.”⁴⁷² At the same time, as Belize notes: “States are obliged, not only through joint action but also *through individual action*, to see to it that ‘any impediment’ to the exercise by the Palestinian people of their right to self-determination resulting from Israel’s wrongful conduct ‘is brought to an end’.”⁴⁷³

3.58. Since the right to self-determination is a right *erga omnes* and since the violation of that right involves a violation of an obligation arising under a peremptory norm of general international law,⁴⁷⁴ **Jordan** correctly confirms that: “all States are entitled to invoke the responsibility of Israel for its systematic violations of the right of the Palestinian people to self-determination.”⁴⁷⁵ As **Belize** and the **League of Arab States** explain, this cooperation may take the form of the

⁴⁶⁹ General Assembly, Resolution 77/208, 15 December 2022 (<https://undocs.org/A/RES/77/208>).

⁴⁷⁰ Human Rights Council, Resolution 49/28, 1 April 2022, para. 8 (<https://www.undocs.org/A/HRC/RES/49/28>).

⁴⁷¹ Article 56 of the United Nations Charter.

⁴⁷² Written Statements of Malaysia, para. 69; of Brazil, para. 61 and 66; and of Namibia, para. 137, a.

⁴⁷³ Written Statement of Belize, para. 85; and of Namibia, para. 137 (b).

⁴⁷⁴ See below, paras. 3.1-3.13.

⁴⁷⁵ Written Statement of Jordan, para. 4.187.

initiation of litigation before an international court – including the ICJ⁴⁷⁶ – or consist in the adoption of counter-measures against Israel.⁴⁷⁷

C. LEGAL CONSEQUENCES FOR THE UNITED NATIONS

3.59. In respect of the consequences for the United Nations arising from the breaches by Israel of the principle of self-determination of the Palestinian people, as several of the Written Statements make clear the obligations of the latter can be determined by analogy with those of States other than Israel.⁴⁷⁸ As the State of Palestine explained in its first round Written Statement⁴⁷⁹, like those States the UN must refrain from recognising the situation resulting from Israel’s violation of the Palestinian people’s right to self-determination,⁴⁸⁰ must refrain from aiding or assisting Israel in maintaining this situation⁴⁸¹ and must do everything in its power to put an end to this situation.⁴⁸² Accordingly, the United Nations is obliged to “distinguish, in [its] relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”⁴⁸³ and more generally not to recognise Israel’s occupation and annexation of the Palestinian territory.⁴⁸⁴ The United Nations must also respect in its actions, positions and documents the positions expressed by the United Nations bodies and the International Court of Justice, including the status of Palestine as an Observer State in the United Nations.

3.60. As **Qatar** explains, any funds made available by the United Nations to Israel must also be monitored to ensure that they do not have the direct or indirect

⁴⁷⁶ See Written Statement of the League of Arab States, paras. 207-209.

⁴⁷⁷ See *ibid.*, paras. 198-206; Written Statement of Belize, para. 84(d).

⁴⁷⁸ Written Statements of Jordan, p. 153, Conclusions, (2) (b); of Qatar, Vol. I, para. 5.82; and of Egypt, paras. 318-323.

⁴⁷⁹ Written Statement of the State of Palestine, paras. 7.124-7.165.

⁴⁸⁰ Written Statements of Qatar, Vol. I, paras. 5.84-5.85; of Indonesia, para. 68(f)(1); and of the Gambia, para. 1.32.

⁴⁸¹ Written Statements of Qatar, Vol. I, paras. 5.86-5.87; of Indonesia, para. 68(f)(1); of Egypt, para. 326(h); and of the Gambia, para. 1.32.

⁴⁸² Written Statements of Qatar, Vol. I, paras. 5.88-5.96; of Indonesia, para. 68(g); of Egypt, para. 326(h); of Lebanon, para. 64; of Brazil, para. 66; of the Gambia, para. 1.33; and of Bolivia, p. 14.

⁴⁸³ Written Statement of Qatar, Vol. I, para. 5.85 quoting “UNSC Res. 2334, para. 5”.

⁴⁸⁴ Written Statements of Egypt, para. 321; and of Kuwait, para. 35.

effect of contributing to enabling Israel to continue to violate the right of the Palestinian people to self-determination.⁴⁸⁵

3.61. Furthermore, as **Jordan** explains, with a view to putting an end to Israel's violation of the rights of the Palestinian people, "[t]he United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end Israel's internationally wrongful acts, taking due account of the Advisory Opinion"⁴⁸⁶. In this respect, **France** correctly states that:

“[L]’Organisation des Nations Unies devrait semblablement préciser les suites à donner à l’avis de la Cour à propos du droit du peuple palestinien à l’autodétermination et des risques d’atteinte au statut international des territoires palestiniens occupés, notamment s’agissant des garanties offertes par ce statut à la population palestinienne.”⁴⁸⁷

3.62. As indicated by the ILC in Article 34 of Articles on State Responsibility, “[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination”⁴⁸⁸. The important matter is that the reparation must “wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed”⁴⁸⁹. This is all the more critical in the present case where most of the norms of international law violated by Israel, including the right to self-determination with most of its ramifications, are peremptory (*jus cogens*) – a factor which must be taken into consideration in determining the nature and modalities of the reparation.⁴⁹⁰ Cumulative violations

⁴⁸⁵ Written Statement of Qatar, Vol. I, para. 5.87. See also the Written Statement of the African Union, paras. 217-220.

⁴⁸⁶ Written Statements of Jordan, p. 154, Conclusions, (2)(c)(vii); of Egypt, paras. 323. See also Written Statements of Lebanon, para. 64; of Brazil, para. 66; and of China, para. 4.

⁴⁸⁷ Written Statement of France, para. 97 (unofficial translation: “[T]he United Nations should similarly specify the follow-up to be given to the Court’s opinion concerning the right of the Palestinian people to self-determination and the risks of undermining the international status of the occupied Palestinian territories, in particular with regard to the guarantees offered by that status to the Palestinian population.”).

⁴⁸⁸ See Draft Articles on Responsibility of States for Internationally Wrongful Acts, *ILC Yearbook*, 2001, Vol. II, Part Two.

⁴⁸⁹ *Factory at Chorzów, Merits, Judgment no. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47. See also p. 29.

⁴⁹⁰ See, e.g., *ILC Yearbook*, 2001, Vol. II, Part Two, p. 96, para. 3 of the commentary of Article 34: “The primary obligation breached may also play an important role with respect to the form and extent of reparation.”

of this principle and the rules attached to it constitute an indisputable justification for the need to combine the various forms of reparation provided for by international law on State responsibility.

Chapter 4.

ISRAEL'S BREACHES OF THE *JUS COGENS* PROHIBITIONS OF GROSS VIOLATIONS OF HUMAN AND HUMANITARIAN RIGHTS, RACIAL DISCRIMINATION AND APARTHEID

4.1. In Chapter 4 of its Written Statement, Palestine demonstrated that Israel's occupation involves – and is existentially founded upon and indistinguishable from – a system which subjugates Palestinians to Israeli oppression and domination, and denies their fundamental rights as human beings under peremptory norms of international human rights and humanitarian law, including the *jus cogens* prohibition of racial discrimination and apartheid. Palestine showed, in particular, that Israel has systematically and as a matter of policy deprived the Palestinian people of these basic rights and discriminated against the Palestinian people as a whole, Palestinians in the OPT and in Israel, as well as Palestinian refugees and diaspora, because of their race, as an integral part of its efforts to dispossess and displace them, and to ensure that the land between the Mediterranean Sea and the Jordan River is under the control of a single group: Jewish Israelis. This objective has been articulated, implicitly and explicitly, by Israeli officials and corroborates the myriad illegal policies and practices against the Palestinian people being pursued by Israel.

4.2. The Written Statements submitted by other States and international organizations expressly concur with, and provide overwhelming support for, these conclusions. This Chapter therefore shows that these States and organizations agree with Palestine that the regime which Israel has established throughout the OPT breaches the *jus cogens* prohibition of gross denial of their fundamental human rights and discrimination against them, which meets the definition of racial discrimination amounting to apartheid under international law.

I. Gross Violations of Fundamental Rules of International Humanitarian and Human Rights Law

4.3. In Section I of Chapter 4 of its Written Statement, Palestine identified specific rights enjoyed by the Palestinian people under international human rights and humanitarian law that Israel has systematically denied them. As shown below,

the Written Statements of many other States and international organizations agree and confirm that Israel has violated each of these fundamental rights and norms.

A. THE DISCRIMINATORY DUAL LEGAL SYSTEM

4.4. A key feature which Palestine identified in Chapter 4 of its Written Statement is Israel's creation of a dual legal system, which subjects Palestinians in the OPT to a different and more onerous set of laws than those that apply to Israeli settlers and which deprives them of many of their fundamental rights.⁴⁹¹ Other States and international organizations have similarly highlighted the blatantly discriminatory nature and pernicious effects of that dual legal system in denying the Palestinian people their fundamental rights under international human rights and humanitarian law. For example:

(a) **Brazil:**

“Since the beginning of the occupation, it has been documented that Israel has extended its legislation to the West Bank, which has resulted in two sets of applicable law. It has also been documented that Israeli domestic law has been extended to occupied territories to apply only to Israeli settlers, while Palestinians are subject to military rules.”⁴⁹²

(b) **Pakistan:**

“Israeli policies and actions in the occupied Palestinian territories are far from isolated incidents, but rather represent a systematic deployment of laws, policies, and institutions to enshrine a dual legal regime that entrenches Israel's control over Palestinians, and the suppression of the rights of Palestinians as a group, while privileging the interests and nurturing the growth and expansion of Jewish Israeli settlement communities.”⁴⁹³

(c) **Indonesia:**

“(1) Israel Has Imposed a Discriminatory Bifurcated Legal Regime

... Since a *de facto* occupation began in 1967, a ‘bifurcated system of citizenship and a dual regime of legal rights have been applied, granting

⁴⁹¹ See Written Statement of the State of Palestine, Chapter 4, Section I.A.

⁴⁹² Written Statement of Brazil, para. 40.

⁴⁹³ Written Statement of Pakistan, para. 45.

superior citizenship and legal status to Jewish Israeli settlers over Palestinians.’ In practice, these policies have been applied selectively to Palestinians, while at the same time Israeli law exclusively applies to Israeli settlers.”⁴⁹⁴

(d) **Jordan:**

“The dual, discriminatory legal regime applied by Israel to the Occupied Palestinian Territory ... benefits the Israeli settlers and negatively affects Palestinians with a view to displacing them from their land.”⁴⁹⁵

(e) **Kuwait:**

“[Israel] has breached its legal obligations, and instead created a dual legal, social and political system with full political legal rights to its settler population unlawfully transferred to the occupied territory and a denial of all basic rights to the protected population.”⁴⁹⁶

(f) **Namibia:**

“[T]hese specific practices take place within a wider context of a dual system of law which provides privileges to the Israeli settlers illegally present in the OPT and denies the human right of the Palestinian people.”⁴⁹⁷

(g) **Saudi Arabia:**

“The development of a dual legal system provides Israeli settlers with rights such as health insurance, social services, education and right of entry into and out of Israel whereas the Palestinian population enjoys none of those rights.

Palestinians are also subject to the military legal system presided over by Israeli military judges which offers very few of the procedural and substantive protections of a purposive criminal legal system, while Israeli settlers are under the full protection of Israeli criminal law.”⁴⁹⁸

⁴⁹⁴ Written Statement of Indonesia, para. 28 (footnote omitted).

⁴⁹⁵ Written Statement of Jordan, para. 4.83.

⁴⁹⁶ Written Statement of Kuwait, para. 33.

⁴⁹⁷ Written Statement of Namibia, para. 75.

⁴⁹⁸ Written Statement of Saudi Arabia, paras. 72(d) and 72(e).

(h) Switzerland:

“En Cisjordanie, le droit interne israélien s’applique de façon extraterritoriale aux colons israéliens, tandis que les Palestiniens sont soumis au droit militaire israélien et au système juridique palestinien.⁶⁰ L’application de deux systèmes juridiques différents sur le même territoire, sur la seule base de la nationalité ou de l’origine, soulève la préoccupation de la manière dont le principe de l’égalité devant la loi peut être respecté.”⁴⁹⁹

4.5. Moreover, the Legal Study commissioned by the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People (UNCEIRPP) found, *inter alia*, that “Israel operates a ‘comprehensive and dual’ legal system in occupied Palestine, where Israeli Jews enjoy full human rights under the application of Israeli domestic law and Palestinians are segregated and subjugated under repressive military rule”⁵⁰⁰.

**B. ARBITRARY ARREST AND DETENTION OF PALESTINIANS AND USE OF TORTURE
AND OTHER CRUEL, DEGRADING AND INHUMAN TREATMENT AGAINST
PALESTINIAN DETAINEES**

4.6. In Chapter 4, Section I.B-C of its Written Statement, Palestine explained that key components of Israel’s occupation regime in the OPT are the systematic arbitrary arrest and detention of many thousands of Palestinian adults and children and the subjection of Palestinian detainees to torture and other cruel, degrading and inhuman treatment. For decades, Palestinians have been subjected to politicized Israeli military courts and unfair trials depriving them of their rights and due process. These aspects of the occupation – and the severe violations of Palestinians’ fundamental rights which they entail – are highlighted in many of the other Written Statements submitted to the Court. For example:

(a) Belize:

“Palestinians who are arrested are often unlawfully transferred into Israel and arbitrarily detained, including through administrative detention

⁴⁹⁹ Written Statement of Switzerland, para. 58 (unofficial translation: “In the West Bank, Israeli domestic law applies extraterritorially to Israeli settlers, while Palestinians are subject to Israeli military law and the Palestinian legal system. The application of two different legal systems on the same territory, on the sole basis of nationality or origin, raises the concern of how the principle of equality before the law can be respected”) (footnote omitted).

⁵⁰⁰ Legal Study, 20 September 2023, A/78/378-S/2023/694, p. 63 (<https://undocs.org/A/78/378>) (footnote omitted).

pursuant to which they are detained for extensive periods without charge or trial. Those who are tried, including children, are subject to discriminatory military courts that lack fair trial guarantees ...

Children are regularly ... subjected to arbitrary arrest and detention, physically abused, denied procedural rights, and are routinely prosecuted in military courts that lack fair trial guarantees and where the conviction rate is above 99 %.”⁵⁰¹

(b) Jordan:

“Large numbers of Palestinians are detained in Israeli prisons, where medical neglect and torture have been allegedly used, and administrative detention is deployed as an ‘arbitrary, coercive and punitive measure’. In his 2022 report on ‘Children and armed conflict’, the Secretary-General noted that the United Nations had verified the detention of over 600 Palestinian children for alleged security offences in the West Bank; among them, 85 had reported ill-treatment and breaches of due process by Israeli forces while in detention, and 75 per cent had reported having experienced physical violence. The Israeli forces continued to arrest and detain Palestinian children arbitrarily, including 428 arrested between January and May 2022. A 2013 UNICEF study concluded that the abuse of Palestinian children in the Israeli military detention system appears to be “widespread, systematic and institutionalized.

In 2013, the Committee on the Rights of the Child noted with deep concern that children continued to be arrested in the middle of the night, that they were taken with hands tied and blindfolded to unknown destinations, that they were subject to violence, humiliation, painful restraints, hooding, threatened with death, physical violence, and sexual assault, restricted in their access to toilet, food and water, and often held in solitary confinement.”⁵⁰²

(c) Namibia:

“Israel undertakes mass arbitrary arrests and imprisonment of Palestinians, including an extensive practice of administrative detention without trial ...”⁵⁰³

⁵⁰¹ Written Statement of Belize, paras. 56(b) and 56(d) (footnotes omitted).

⁵⁰² Written Statement of Jordan, Vol. I, paras. 4.129-4.130 (footnotes omitted).

⁵⁰³ Written Statement of Namibia, para. 75 (footnote omitted).

(d) Organisation of Islamic Cooperation:

“Les détentions arbitraires et mauvais traitements sont un autre moyen employé par Israël pour terroriser la population palestinienne et l’inciter à fuir. Depuis 1967, plus de 800 000 Palestiniens ont été traduits devant les tribunaux militaires d’Israël et condamnés à la détention en Israël. Et ce nombre augmente d’année en année. Certains le sont comme ‘*prisonniers de sécurité*’, parfois sans inculpation, ni jugement.”⁵⁰⁴

(e) Pakistan:

“Israel’s prevalent and well-documented practices of arbitrarily detaining Palestinians under the guise of broadly defined security offenses, denying Palestinian detainees’ basic fair trial and due process rights, using ill-treatment and torture with impunity, and placing Palestinians in prolonged administrative detention without charges or trial i.e. Military Order 1651, together can amount to the inhuman act of denying Palestinians the right to liberty of person ...”⁵⁰⁵

(f) Saudi Arabia:

“Israel further buttresses its complex environment of coercion against Palestinian civilians by deploying an administrative detention regime that allows military commanders to detain an individual for six months, extendable by six additional months for reasons of alleged public security. Importantly, Israeli law does not define a maximum period of detention, meaning ‘administrative detainees may, in theory, remain in detention indefinitely.’ ... Recent reports of U.N. human rights bodies indicate that as of March 2023 there were approximately 1,000 Palestinians in administrative detention, which is said to be the highest number in 15 years.”⁵⁰⁶

4.7. Since those Written Statements were filed, the conditions of detention for Palestinians in Israeli prisons have become even more severe and stringent. On 24

⁵⁰⁴ Written Statement of the Organisation of Islamic Cooperation, para. 318 (unofficial translation: “Arbitrary detentions and ill-treatment are another means used by Israel to terrorize the Palestinian population and encourage them to flee. Since 1967, more than 800,000 Palestinians have been brought before Israel’s military courts and sentenced to detention in Israel. And this number increases from year to year. Some are held as ‘security prisoners’, sometimes without charge or trial.”)

⁵⁰⁵ Written Statement of Pakistan, para. 59 (footnote omitted).

⁵⁰⁶ Written Statement of Saudi Arabia, para. 60.

July 2023, an amendment was made to the Prisons Ordinance (Temporary Order) (a piece of legislation designed to deal with the problem of severe overcrowding in Israeli prisons). The July 2023 amendment categorically excludes so called “security prisoners” from early release, without any individual assessment of their circumstances. As almost all “security prisoners” are Palestinian political prisoners, this change in the law is specifically tailored to exclusively affect them, while not affecting Israeli prisoners.⁵⁰⁷

C. ISRAEL’S UNLAWFUL USE OF FORCE AGAINST PALESTINIANS

4.8. In Chapter 4, Section I.D of its Written Statement, Palestine addressed Israel’s extensive unlawful use of force against Palestinian civilians – including children – in detail. Palestine also addressed the acquiescence and participation of the Israeli military in acts of brutal violence against Palestinians committed by Israeli settlers.⁵⁰⁸ The Written Statements of many other States and organisations provide overwhelming support for the conclusion that Israel routinely targets Palestinians with unlawful force (including by encouraging, facilitating and participating in unlawful violence by Israeli settlers). For example:

(a) **Belize:**

“Palestinians are routinely targeted and subjected to excessive uses of force and arbitrary killing by Israeli security and other officials, including through the use of drones and including during peaceful protests against the denial of their rights. A recent example of the wholly disproportionate force used by Israeli forces against Palestinians is the July 2023 assault on the Jenin refugee camp in the West Bank in which 12 Palestinians were killed and at least 120 more were wounded. This assault was immediately and forcefully condemned by numerous United Nations officials, including the Secretary-General. Palestinians and their homes and property are also subjected to increasing numbers of attacks from Israeli settlers who operate with ‘complete impunity’ and whose violent actions are in many instances directly facilitated or participated in by Israeli security forces. Such conduct breaches Israel’s obligation not to violate the rights of Palestinians under international human rights and humanitarian law, as well as its obligation to

⁵⁰⁷ “Ben-Gvir Blocks Release of Prisoners, Mainly Palestinians, Despite Israeli Security Orgs’ Objections”, *Haaretz*, 31 August 2023, (<https://tinyurl.com/33ykhd7t>); Adalah Legal Center for Arab Minority Rights in Israel, “Adalah, Al Mezan and ACRI Petition Israeli Supreme Court Against the Law that Denies Administrative Release to ‘Security Prisoners’”, Press release, 31 August 2023 (<https://tinyurl.com/bdf9chb>).

⁵⁰⁸ See Written Statement of the State of Palestine, paras. 4.184-4.191.

exercise due diligence to prevent private persons from committing such violations. ...

Children are regularly killed arbitrarily by Israeli security forces ...”⁵⁰⁹

(b) **Bolivia:**

“[The Human Rights] Committee urged Israel to redouble its efforts to prevent and combat violence perpetrated against Palestinians by Israeli settlers in the West Bank, including East Jerusalem, as well as by Israeli security forces together with these settlers, and to provide adequate protection to the victims. In addition to urging it to take all necessary measures to end the practice of torture and ill-treatment inflicted on Palestinians deprived of their liberty, especially children. Bolivia notes that these recommendations and observations have not been complied with, and that, on the contrary, they have been intensified through the implementation of plans and programs that allow the expansion of Israeli settler settlements under extreme violence backed by the defense forces.”⁵¹⁰

(c) **Chile:**

“In its most recent Report of 3 October 2022, the [Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People] reported on ... the unprecedented levels of settler violence, and multiple reports of a qualitative increase in the participation and complicity of Israeli security forces in settler violence.”⁵¹¹

(d) **Cuba:**

“According to the United Nations High Commissioner for Human Rights, in the Occupied Palestinian Territory, the use of lethal force by the Israeli security forces has become a widespread practice often used regardless of the particular level of severity of the possible threat detected, in violation of international regulations.”⁵¹²

⁵⁰⁹ Written Statement of Belize, paras. 56(b) and 56(d) (footnotes omitted).

⁵¹⁰ Written Statement of Bolivia, p. 9.

⁵¹¹ Written Statement of Chile, para. 12.

⁵¹² Written Statement of Cuba, p. 9.

(e) Jordan:

“The coercive environment against the Palestinians is supported by the increasing frequency and readiness of the Israeli forces to respond, often with lethal force, to protests by and on behalf of those who have suffered loss and damage to their homes in an illegal and unethical planning regime. The situation is exacerbated by discriminatory law enforcement, by the apparent impunity of those who engage in violence against Palestinians, and by the deliberate policy of military forces – obliged under the law of occupation to provide protection to the people of the occupied territory – to stand by and not interfere when Israeli settlers attack Palestinians and destroy their houses, property, crops, farmland and goods; or when Israeli officers and forces under their command and control express support for such activities or actually engage in them. ...

In the period January 2022 to May 2023, the OCHA recorded 265 Palestinian fatalities in the West Bank, 258 of them due to live ammunition; they included 202 men, 54 boys, and seven women. In the same period, it recorded 14,276 Palestinian injuries, of which 9,734 were due to tear gas inhalation, 1,817 to rubber bullets, 1,190 to live ammunition, and 536 to physical assault.

.....

Besides the systemic violence employed by the State of Israel, Palestinians must now face a system that not only fails to offer them protection, but that also fails to hold settlers accountable for the violence they commit. The OHCHR noted ‘the application of different legal systems to settlers and Palestinians; the persistent and prevailing lack of thorough and impartial investigations; the low rate of indictments and convictions; frequently delayed processes; and lenient charges’. Attacks and intimidation by settlers, who are increasingly using firearms, have increased dramatically with the establishment of settler farm outposts, and have resulted in killings, injuries, and property damage, adding to the coercive environment.

Resistance to settler attacks is often met by Israeli forces who use tear gas, rubber bullets (which are often fatal when used against children), or live ammunition.”⁵¹³

(f) Namibia:

“[I]n breach of its duties as an occupying power as well as its protective duties under international human rights law, Israel has failed to take all

⁵¹³ Written Statement of Jordan, paras. 4.126-4.127 and 4.133-4.134 (footnotes omitted).

reasonable measures to protect Palestinians from violence committed by settlers, often providing protection and support to the settlers committing such violence. This has led to an 'atmosphere of impunity surrounding attacks by settlers', which itself contributes to the inability of Palestinians to exercise basic freedoms as guaranteed by international law."⁵¹⁴

(g) **Saudi Arabia:**

"The right to life of Palestinian people has not been protected by Israel, which has caused the deaths of Palestinian civilians by prohibiting access to medical care and pursuing abusive water policies, among other abuses. In addition, settler violence and attacks also violate the right of Palestinians to life, liberty and security of the person. There has been a significant increase in the incidence, frequency and severity of settler violence in recent years and in the involvement of the Israeli security forces in such violence, as well as other acts of impunity directed against Palestinian civilians by the Israeli military."⁵¹⁵

4.9. Since those Written Statements were submitted, the evidence of Israel's systematic disregard for **Palestinian** lives has grown, as shown by the increase in use of lethal force against civilians. For example, on 28 August 2023 UNOCHA published a report which found that:

"The number of Palestinians killed in the West Bank and Israel by Israeli forces so far in 2023 (172) has surpassed the total number killed in all of 2022 (155), which already saw the highest fatalities in the West Bank, including East Jerusalem, since 2005."⁵¹⁶

4.10. The escalating use of force by Israeli forces against Palestinians is also reflected in statistics concerning the number of injuries sustained by Palestinians. In September 2023, for instance, UNOCHA reported that:

⁵¹⁴ Written Statement of Namibia, para. 74.

⁵¹⁵ Written Statement of Saudi Arabia, para. 72(a) (footnotes omitted).

⁵¹⁶ United Nations Office for the Coordination of Human Affairs (UNOCHA), "Protection of Civilians Report - 8-21 August 2023", 28 August 2023 (<https://tinyurl.com/2wxb7f3w>).

“Since the beginning of the year, 722 Palestinians have been injured with live ammunition by Israeli forces in the West Bank, almost double the number in the equivalent period in 2022 (432).”⁵¹⁷

4.11. In the same month, the United Nations High Commissioner for Human Rights, Volker Türk, stated that he was “profoundly shocked by the escalating violence in the Occupied Palestinian Territory”, adding that: “The use of airstrikes in the occupied West Bank is especially concerning.”⁵¹⁸

4.12. Israel’s airstrikes in the Gaza Strip during the month of October, and the thousands of civilians killed, injured and displaced by them – together with the destruction of entire residential neighborhoods, hospitals, schools, mosques and churches, and the forced evacuation of hundreds of thousands – have already been described in paragraphs 15 to 20 of the Introduction to these Written Comments.

4.13. These recent events provide irrefutable proof of Israel’s flagrant and systematic disregard for Palestinians’ lives throughout the OPT.

D. DENIAL OF FREEDOM OF MOVEMENT

4.14. In Chapter 4, Section I.E of its Written Statement, Palestine explained Israel’s denial of the right of freedom of movement of Palestinians. This has a profound impact on the daily lives of Palestinians throughout the OPT – which is highlighted in the Written Statements of a number of other States and organizations. For example:

(a) **African Union:**

“The Palestinians’ freedom of movement within the occupied territories is further restricted by a system of checkpoints maintained by the Israeli military. Some of these checkpoints are fixed, while others are mobile and scattered throughout the West Bank. Crossing these checkpoints often requires extended periods of time, involving rigorous security checks and vehicle inspections resulting in long delays. Israel also exercises complete control over the entry and exit points to and from the West Bank. As documented, such ‘[m]ovement restrictions undermine individuals’ rights to health care, work, education and family life, and result in the rupture of

⁵¹⁷ UNOCHA, “Protection of Civilians Report - 22 August–4 September 2023”, 11 September 2023 (<https://tinyurl.com/yc7rausz>).

⁵¹⁸ Office of the High Commissioner for Human Rights, Volker Türk, Statement delivered at the 54th Session of the Human Rights Council, 11 September 2023 (<https://tinyurl.com/489ymz8t>).

social, economic, cultural and family ties. Cumulatively, these violations undermine the right of Palestinians to self-determination and to an adequate standard of living.’

.....

These policies and practices amount to internationally wrongful acts that breach Israeli obligations under international humanitarian law and international human rights law.”⁵¹⁹

(b) Malaysia:

“Israel imposes a range of measures which affect the residency rights and freedom of movement of Palestinians, fragmenting the Palestinian people. In its Concluding Observations on Israel’s Fifth Periodic Report, the Human Rights Committee expressed its deep concern over Israel’s systematic practice of demolitions and forced evictions in the West Bank. The blockade of Gaza restricts the movement of Palestinians into and out of the territory. In East Jerusalem, residency rights have been diminished and revoked, and there are extensive instances of forced eviction.”⁵²⁰

(c) Qatar:

“Israel’s policy of fragmenting, isolating and restricting Palestinian movement manifests itself in different ways across the OPT. In the West Bank (including East Jerusalem), Israel’s military occupation and settlement activity has created a labyrinth of physical and bureaucratic barriers to Palestinians’ freedom of movement, affecting all aspects of their daily lives In Gaza, Israel’s 16-year blockade has isolated 2.2 million Palestinians from the rest of the world, and created one of the world’s largest and longest standing humanitarian crises”⁵²¹

(d) Saudi Arabia:

“Racial discrimination is also systemic in relation to the freedom of movement, where movement permit requirements, military incursions, and checkpoints remain a part of daily life for Palestinians while Israeli settlers do not face any of such impediments. There is also clear road segregation for the exclusive use of the Israeli population. In Gaza in particular, given

⁵¹⁹ Written Statement of the African Union, paras. 163 and 165 (footnote omitted).

⁵²⁰ Written Statement of Malaysia, para. 48 (footnotes omitted).

⁵²¹ Written Statement of Qatar, Vol. I, para. 2.68.

the 15-year blockade, and the ‘destruction of essential infrastructure, the population continues to face critical restrictions on the freedom of movement of both individuals and goods.’”⁵²²

4.15. Reports published since those Written Statements were filed provide further evidence of the scale of Israel’s restrictions on Palestinians’ freedom of movement. In August 2023, UNOCHA published a report which documented an 8 per cent rise in the number of obstacles restricting the freedom of movement of Palestinians in the OPT since early 2020. UNOCHA documented the existence of 645 movement obstacles for Palestinians across the West Bank. These include “49 constantly staffed checkpoints; 139 intermittently staffed checkpoints; 304 roadblocks, earth-mounds and road gates; 73 earth walls, road barriers and trenches; and 80 additional obstacles of various types within the Israeli-controlled area of Hebron (H2)”⁵²³. UNOCHA found that these restrictions “have a severe impact on Palestinians by preventing or restricting access and movement to main roads, urban centres, services, and agricultural areas”⁵²⁴.

4.16. In August 2023, at a meeting of the Israeli cabinet the Minister for National Security, Itamar Ben Gvir announced proposals for further closures and lockdowns of Palestinian villages and an increase in the number of checkpoints in the West Bank and measures to rescind entry permits for Palestinian workers.⁵²⁵ The discriminatory nature of these measures, and their intended impact on Palestinians’ freedom of movement in the OPT, were laid bare in a television interview the following day, in which Ben-Gvir boasted:

“[M]y right, the right of my wife and my children to move around Judea and Samaria [i.e., the West Bank] is more important than freedom of movement for the Arabs [i.e., Palestinians]. ... [T]hat’s the reality.”⁵²⁶

⁵²² Written Statement of Saudi Arabia, para. 72(f) (footnotes omitted).

⁵²³ UNOCHA, “Movement and Access in the West Bank - August 2023”, 25 August 2023, p. 1 (<https://tinyurl.com/yc6y3hwn>). See also UNOCHA, “UN has documented 645 Israeli movement obstacles within the West Bank”, 25 August 2023 (<https://tinyurl.com/9j3b2h8f>).

⁵²⁴ UNOCHA, “Movement and Access in the West Bank - August 2023”, 25 August 2023 p. 1 (<https://tinyurl.com/yc6y3hwn>).

⁵²⁵ “Ben Gvir urges locking down Palestinian towns in cabinet meet; Gallant pushes back”, *The Times of Israel*, 22 August 2023 (<https://tinyurl.com/37hbjumr>).

⁵²⁶ “Israel’s Ben-Gvir: ‘My Right to Life Is More Important Than Arabs’ Freedom of Movement”, *Haaretz*, 23 August 2023 (<https://tinyurl.com/2p9r5jc8>).

E. FREEDOM OF RELIGION

4.17. In Chapter 4, Section I.G of its Written Statement, Palestine described the various ways in which Israel systematically discriminates against Palestinians in respect of the exercise of the right to freedom of religion, in particular by restricting the ability of Palestinian Christians and Muslims to access places of worship while imposing no equivalent restrictions on Israeli settlers in the OPT or other Israeli citizens.⁵²⁷ This discriminatory aspect of the occupation is addressed by a number of other States. For example:

(a) **Belize:**

“[T]he imposition of restrictions impeding access by Palestinians to, and attacks on, mosques and places of worship infringe Palestinians’ freedom to manifest their religion.”⁵²⁸

(b) **Jordan:**

“[T]he Israeli authorities have shown themselves unable or unwilling to afford any or any effective respect to the freedom of worship of Christians and Muslims.

Furthermore, since 2000, through deliberate acts and/or deliberate omissions, the Israeli authorities have increasingly obstructed access to Muslim and Christian Holy Places, not just for worshippers but also for authorities vested with responsibility to ensure their maintenance and upkeep.

.....

The Israeli authorities have repeatedly engaged in conduct that has the effect of obstructing worshippers’ access to the Holy Places. This is done through a number of measures, including (i) closing entry points and using physical barriers, (ii) limitations on numbers of worshippers and the times at which they can enter, (iii) entry bans upon worshippers (either individually or by category) and religious leaders, and (iv) full closure of certain Holy Places (sometimes at moments of particular religious significance).

Most unfortunately (indeed shamefully) such measures have included physical (sometimes fatal) assaults upon worshippers and religious leaders

⁵²⁷ Written Statement of the State of Palestine, paras. 4.123-4.127.

⁵²⁸ Written Statement of Belize, para. 56(c).

either by extremist Jews (which the Israeli authorities have failed to prevent) or by the Israeli military and police themselves.

Israel's conduct in respect of the Holy Places in the Occupied Territory has been consistently recognised in UN General Assembly Resolutions ("UNGARs") and UN Security Council Resolutions ("UNSCRs") as amounting to violations of applicable international law. Such resolutions have: (1) expressed concern about Israeli excavations in and around religious sites in the Old City of Jerusalem, and determined that Israel's persistent excavations transforming the historical, cultural and religious sites of Jerusalem amount to flagrant violations of the Fourth Geneva Convention; (2) expressed alarm at and condemned acts of violence committed by the Israeli forces in and around AAM/HAS [Al-Aqsa Mosque/Al Haram Al-Sharif]; (3) called for the cessation and reversal of Israel's opening of an entrance to a tunnel in the vicinity of AAM/HAS; (4) deplored the provocation of Mr. Sharon's visit to AAM/HAS on 28 September 2000; (5) deplored acts of provocation and incitement by Jewish settlers against Holy Places; and (6) called for respect for the historic *Status Quo*".⁵²⁹

(c) Malaysia:

"The movement restrictions ... prevent Palestinians from visiting sites of religious and cultural importance in other parts of the Occupied Palestinian Territory."⁵³⁰

(d) Saudi Arabia:

"Israeli security forces have also directed religion-based violence and intimidation against the Muslim population in Jerusalem by restricting access to and regularly storming the Al Asqa mosque grounds and attacking Muslim worshippers."⁵³¹

(e) Türkiye:

"The Al-Asqa compound is an exclusively Muslim holy site. According to the historical and legal Status Quo, the holy place is only for Muslims to perform worship or visit. However the compound is systematically targeted

⁵²⁹ Written Statement of Jordan, Part two, paras. 4-5; 100-101 and 299 (footnotes omitted).

⁵³⁰ Written Statement of Malaysia, para. 59 (footnote omitted).

⁵³¹ Written Statement of Saudi Arabia, para. 63 (footnote omitted).

by the incursions and incitements of the Israeli security forces. ... In a recent breach, the Israeli security forces stormed the Al-Aqsa Mosque and attacked the Muslim worshippers who were in the mosque, detaining many of them.

.....

It should be noted that, in violation of the Status Quo, Israeli security forces are deployed inside the compound controlling access. Israeli authorities have limited Palestinians' access to the compound and prohibited them from entering the Al Aqsa while allowing access to Jews."⁵³²

(f) **United Arab Emirates:**

"In Jerusalem, Israel has hindered freedom of access to the Holy Places by actively preventing access to or unduly interfering with the long-established arrangements governing the Holy Places in the city. These actions have included repeated violent incursions, including by Israeli state actors, into the Al-Aqsa Mosque compound as well as the imposition of access restrictions on Muslim worshippers."⁵³³

F. DISCRIMINATORY LAND AND PLANNING REGIME IN THE OPT

4.18. In Chapter 4, Section I.H of its Written Statement, Palestine provided a detailed account of how Israel has established a land and planning regime in the OPT which systematically discriminates against Palestinians.⁵³⁴ The regime has far-reaching implications for the lives and livelihoods of Palestinians throughout the OPT, which are highlighted in many of the other Written Statements. For example:

(a) **African Union:**

"A recent report by the United Nations Economic Commission for West Asia (ESCWA) has evidenced that Israel's policies and practices in the occupied Palestinian territories form part of a 'matrix of control and domination that imposes and entrenches demographic and physical 'facts on the ground', laying the basis for potential eventual incorporation or annexation of parts of the occupied territory and its resources into Israel, while securing subjugation of the Palestinian population.' As discussed in this section, these policies and practices, which are applied in a manner that

⁵³² Written Statement of Türkiye, p. 8.

⁵³³ Written Statement of the United Arab Emirates, para. 33.

⁵³⁴ Written Statement of the State of Palestine, paras. 4.128-4.144.

systematically discriminates against Palestinians and Palestinian communities, include exercising control over land and natural resources, especially water resources, implementing discriminatory zoning and urban planning policies, expropriating and destroying Palestinian property, and restricting the mobility of Palestinians through various measures, including a restrictive access-permit regime.

.....

Israel has implemented similar zoning and land-use policies and practices in occupied East Jerusalem. Indeed, East Jerusalem is perhaps the area of the occupied Palestinian territories in which the overarching objectives of Israel's discriminatory zoning policies, and its practices relating to the expropriation and destruction of property, are most pronounced.

.....

The African Union considers that Israel's discriminatory zoning policies are internationally wrongful acts that violate the relevant provisions of the 1907 Hague Regulations, especially Articles 43, 46, 47, 52, and 53, and the relevant provisions of the Fourth Geneva Convention, in particular Articles 33, 49, 52, and 53."⁵³⁵

(b) **Belize:**

“Key features of this discriminatory system include (but are not limited to):
 (a) *Discriminatory zoning, planning and land use policies, and access to natural resources:* In addition to being displaced from their homes and land, having their property appropriated or destroyed, and having their natural resources pillaged ..., Palestinians in the West Bank are subjected to a discriminatory urban planning and zoning system. Within Area C in the West Bank, 70 % of the land is designated as Israeli State land and only 1 % is zoned for Palestinians. In East Jerusalem, Israel has expropriated at least 35 % of the city for the construction of settlements and has restricted Palestinians to less than 13 % of the land. Construction permits are exceedingly difficult for Palestinians to obtain, with less than 1 per cent of Palestinian requests for construction permits in Area C being granted between 2016 and 2020, compared to 98 % of Israeli requests. This includes permit requests by Palestinians for homes, schools, health facilities and other public facilities (including following the destruction of such facilities by Israel where they were built without a permit). Home demolitions, forced evictions and forced displacements have been held to violate the rights of

⁵³⁵ Written Statement of the African Union, paras. 172, 174 and 180 (footnotes omitted).

Palestinians to adequate housing and privacy. Home demolitions that are undertaken expressly as a punitive measure – such as the demolition of the homes of family members of persons alleged to have attacked Israeli settlers or Israel – constitute collective punishment prohibited by international humanitarian law.”⁵³⁶

(c) **Cuba:**

“Demolitions and forced evictions negatively affect the right to appropriate housing, water, sanitation, health, education, family life, residence and freedom of movement. These practices disproportionately affect Palestinian women and girls, for they have devastating effects on their physical and psychological wellbeing.”⁵³⁷

(d) **Jordan:**

“In Area C (comprising over 60 per cent of the West Bank), the planning regime prevents Palestinians from accessing basic protection, resources, housing, work, and essential services, including education and healthcare.”⁵³⁸

(e) **Namibia:**

“Israel exercises control over the economic and social development of the Palestinian people through an extensive system of planning and zoning within the West Bank. Applications for building permits are commonly rejected, and ‘Israeli military application of land, zoning and property rules in East Jerusalem and the West Bank discriminatorily benefits Israeli Jewish settlers and significantly disadvantages Palestinians.’ The system of planning and zoning provides for house demolitions for unlicensed constructions in Area C, and along with punitive house demolitions and the creation of coercive environments, has forced the widespread and systematic transfer of Palestinian population.”⁵³⁹

⁵³⁶ Written Statement of Belize, para. 56(a) (footnotes omitted; emphasis in the original).

⁵³⁷ Written Statement of Cuba, p. 8 (footnotes omitted).

⁵³⁸ Written Statement of Jordan, para. 4.119.

⁵³⁹ Written Statement of Namibia, para. 72 (footnotes omitted).

(f) Switzerland:

“Le Secrétaire général a qualifié le régime de planification et de zonage, tel qu’il est mis en œuvre par Israël dans la zone C, de restrictif, discriminatoire et incompatible avec les normes du droit international.”⁵⁴⁰

4.19. The 2023 Legal Study states that “Israel engineers every aspect of the settlement enterprise: planning and zoning; appropriating Palestinian lands, including ‘uncultivated’ agricultural lands, as ‘State lands’; providing water, sanitation and electricity services to the settlements; and authorizing the construction of roads, railway lines and other infrastructure to connect the settlements to each other and to Israel proper”⁵⁴¹ and that, relatedly, Israel invokes military orders to “systematically deny Palestinians permits for housing construction. Between January 2009 and January 2023, some 9,163 unlicensed structures were demolished by the Israeli military, resulting in the displacement of 13,000 Palestinians.”⁵⁴²

G. RESTRICTIONS ON ACCESS TO AND USE OF NATURAL RESOURCES IN THE OPT

4.20. In Chapter 4, Part I.I of its Written Statement, Palestine explained that Israel has engaged in appropriation of natural resources, in particular in relation to water.⁵⁴³ The Written Statements of several other States and international organizations also highlight this feature of Israel’s occupation. For example:

(a) African Union:

“Palestinian communities have either been denied access to water resources in the West Bank, such as the Jordan River, or subjected to a management regime that has been administered in a discriminatory manner that favours Israeli settlements in the West Bank and East Jerusalem and that has permitted Israel to transport water from the West Bank to benefits its own citizens inside its territory.”⁵⁴⁴

⁵⁴⁰ Written Statement of Switzerland, para. 46 (footnote omitted) (unofficial translation: “The Secretary-General described the planning and zoning regime, as implemented by Israel in Area C, as restrictive, discriminatory and inconsistent with the norms of international law”).

⁵⁴¹ Legal Study, 20 September 2023, A/78/378-S/2023/694, p. 50 (<https://undocs.org/A/78/378>) (footnote omitted).

⁵⁴² *Ibid.* (footnote omitted).

⁵⁴³ See Written Statement of the State of Palestine, paras. 4.145-4.153.

⁵⁴⁴ Written Statement of the African Union, para. 188 (footnote omitted).

(b) **Belize:**

“Israel has also taken control of all water sources in the West Bank, is using them primarily for its own purposes and those of its nationals, and has prohibited Palestinians from constructing new water installations or maintaining existing installations without a permit. Even rainwater harvesting cisterns owned by Palestinians are often destroyed by the Israeli armed forces. As a result, hundreds of Palestinian communities in the West Bank have no access to running water, and even in villages that are connected to the water network the taps often run dry, leaving Palestinians no choice but to purchase at high prices water brought in on trucks — a system that forces Palestinians essentially to buy back their own water that Israel and Israeli companies have appropriated. The United Nations Committee on the Elimination of Racial Discrimination has recognised that such measures amount to the discriminatory allocation of land and water in the Palestinian Territory.”⁵⁴⁵

(c) **Chile:**

“Israel has enclaved most of the agricultural lands, water sources and underground reservoirs within their illegal settlements, impeding access to Palestinians, or establishing administrative obstacles for their ability to extract them; in such a manner, that water is disproportionately allocated to the settlements. Thus, Israel has been exploiting for its own benefit, quarries, Dead Sea minerals, oil and gas, and water. On the other hand, the water situation in Gaza is verging on a humanitarian catastrophe, since 96 per cent of its water sources have become unfit for human consumption, because of their inability to operate their waste treatment system.”⁵⁴⁶

(d) **Maldives:**

“Israel has violated these rules of international humanitarian law and international human rights law in the course of its occupation of the OPT. Israel has taken control of all water resources in the West Bank and has been using much of the water for its own purposes. As of 2023, it is estimated that less than 40% of households have access to safely managed water, ranging from 4% in the Gaza Strip to 66.2% in the West Bank.”⁵⁴⁷

⁵⁴⁵ Written Statement of Belize, para. 56(a) (footnotes omitted).

⁵⁴⁶ Written Statement of Chile, para. 59 (footnotes omitted).

⁵⁴⁷ Written Statement of Maldives, para. 41 (footnotes omitted).

(e) Namibia:

“Israel’s practices in relation to the exploitation of natural resources prevent Palestinians from full participation in economic life and prevent their full development as a group. These practices also entail an infringement of the right of the Palestinian people to permanent sovereignty over their natural resources and exceed any possible justification accruing under the law of occupation. To focus on one resource – water – the same Independent International Commission of Inquiry Report found that: ‘Israel has taken control of all water resources in the West Bank and has been using much of the water for its own purposes.’ This has directly affected the economic potential of Palestinian agriculture and broader economic development as a group. The question of access to water is also addressed in more detail by the United Nations High Commissioner for Human Rights in their Report to the Human Rights Council of 2021. This Report illustrates how ‘Israeli occupation policies and practices negatively affect the enjoyment of human rights of the Palestinian people in terms of rights to safe drinking water and sanitation in the Occupied Palestinian Territory, including East Jerusalem.’”⁵⁴⁸

H. VIOLATIONS OF POLITICAL, CIVIL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS

4.21. In Chapter 4, Section I.J of its Written Statement, Palestine addressed the many ways in which Israel systematically discriminates against Palestinians in the OPT in respect of labour rights, access to education and access to health. Many other States and organizations have similarly described of the violation of these fundamental social and economic rights in their Written Statements. For example:

(a) League of Arab States:

“Rights violations, which breach IHL and IHRL, have been and are widespread and cover the full spectrum of rights, in terms of civil and political rights (e.g., the right to life; freedom from torture and cruel, inhuman and degrading treatment and punishment; freedom of movement) and economic, social and cultural rights (e.g. the rights to housing, education, and cultural heritage).”⁵⁴⁹

⁵⁴⁸ Written Statement of Namibia, para. 71 (footnotes omitted).

⁵⁴⁹ Written Statement of League of Arab States, para. 78.

(b) **Bolivia:**

“The result of these acts has meant that more than five million Palestinian refugees cannot return to their homes or lands, and that those who still survive these constant attacks are systematically deprived of access to water, health, education, basic services, work, and finally life, having to endure serious human rights violations in a constant affront furnished through State policies implemented by Israel characterized by disproportionate acts of violence and rampant impunity.”⁵⁵⁰

(c) **Russian Federation:**

“The policy of establishing Israeli settlements in Palestine is aggravated by numerous accompanying violations of other rules of international humanitarian law and international human rights law, such as the right to life, to respect for private and family life, to property, to freedom of movement, to freedom of religion, to work, to health, to education, to an adequate standard of living.”⁵⁵¹

(d) **African Union:**

“[T]he Separation Wall violates ... the applicable rules of international human rights law, including ... the human rights to work, health, education, and to an adequate standard of living.”⁵⁵²

(e) **Chile:**

“Israel’s policy of closures not only restricts the freedom of movement of the Palestinian population but has also greatly impinged on the right to education, the right to work and access to health of the Palestinian population. All these measures, together with the imposition of obstacles to trade with the outside world, seriously affect the economic, social, and cultural development of the people of Palestine.”⁵⁵³

“[T]he blockade, lack of essential services, and continued outbreak of hostilities has brought the health system in Gaza to the brink of collapse. Undeniably, the blockade has provoked the lack of adequate medical

⁵⁵⁰ Written Statement of Bolivia, pp. 15-16.

⁵⁵¹ Written Statement of Russian Federation, Conclusion, para. (10).

⁵⁵² Written Statement of the African Union, para. 169.

⁵⁵³ Written Statement of Chile, para. 101.

supplies and essential drugs, and hampered the import of items required for the reparation of key infrastructure and equipment.”⁵⁵⁴

(f) **Cuba:**

“Due to the restrictions imposed on freedom of circulation at checkpoints, Palestinian women and girls in the occupied Palestinian territory find it hard to arrive to health centers like hospitals and clinics and receive emergency care and specialized treatment.”⁵⁵⁵

(g) **Jordan:**

“Palestinian children are particularly affected by these discriminatory practices. In addition to the emotional distress and trauma suffered as a result of their experiences of arrest and detention or otherwise arising in confrontation with the Israeli forces or settlers, attacks on education facilities, staff and students, and other interferences with the normal functioning of schools and children’s access to education should be highlighted.”⁵⁵⁶

(h) **League of Arab States:**

“[N]early two decades of Israeli movement restrictions have had uniquely devastating impact on Palestinian women in Gaza in terms of their ability to access education, employment, and vital healthcare services, including reproductive and maternal healthcare.”⁵⁵⁷

(i) **Lebanon:**

“[L]es enfants sont une autre composante de la société palestinienne gravement affectée par l’occupation israélienne. La violence infligée à la population civile, la destruction des écoles et des hôpitaux violent le droit des enfants palestiniens à la vie, à l’éducation et à une croissance saine et protégée.”⁵⁵⁸

⁵⁵⁴ *Ibid.*, para. 66 (footnotes omitted).

⁵⁵⁵ Written Statement of Cuba, pp. 9-10 (footnote omitted).

⁵⁵⁶ Written Statement of Jordan, para. 4.140 (footnote omitted).

⁵⁵⁷ Written Statement of the League of Arab States, para. 87 (footnote omitted).

⁵⁵⁸ Written Statement of Lebanon, para. 46 (unofficial translation: “[C]hildren are another component of Palestinian society seriously affected by the Israeli occupation. The violence inflicted

(j) Maldives:

“Israel’s settlement program and related Israeli policies have had a serious negative impact on the human rights of Palestinians, including their ... access to livelihood, education, [and] health”⁵⁵⁹

(k) Syria:

“The discriminatory nature of the blockade imposed on the Gaza Strip was recognized by the UN Committee on the elimination of racial discrimination. It was found to violate the convention on the elimination of racial discrimination, affecting the right of Palestinians to movement, housing and education, health, water and sanitation.”⁵⁶⁰

4.22. Recent reports highlight the ongoing effect of Israel’s discriminatory violation of Palestinian children’s right of access to education. For example, UNOCHA has reported that Israeli authorities demolished three Palestinian schools in the past twelve months, “the most recent of which happened on 17 August 2023 in the village of Ein Samiya, just a few days before the start of the new school year.”⁵⁶¹ A total of 58 other Palestinian schools are “currently under partial, full demolition or stop-work orders”.⁵⁶² It is not by coincidence that such systematic violations of the political, civil, economic, social and cultural rights and constant coercion have led to the depopulation of Palestinian communities, including Ein Samiya, which on 22 May 2023, witnessed the last remaining residents of the community, home to 28 families with a total of about 200 members, abandon their homes, among at least six Palestinian communities forcibly displaced in their entirety in the past two years.⁵⁶³

on the civilian population, the destruction of schools and hospitals violate the right of Palestinian children to life, education and healthy and protected growth.”).

⁵⁵⁹ Written Statement of Maldives, para. 37(a).

⁵⁶⁰ Written Statement of Syria, para. 25 (footnote omitted).

⁵⁶¹ UNOCHA, “Back to school: 1.3 million Palestinian children in the West Bank and the Gaza Strip are returning to school during a tumultuous year”, 21 August 2023 (<https://tinyurl.com/5zrd2shh>).

⁵⁶² *Ibid.*

⁵⁶³ B’Tselem, *The pogroms are working – the transfer is happening already*, September 2023, pp. 2-3 (<https://tinyurl.com/ke9eu7f6>).

I. COLLECTIVE PUNISHMENT

4.23. In Chapter 4, Part I.K of its Written Statement, Palestine explained that Israel has inflicted various forms of prohibited collective punishment against Palestinians. Palestine cited the 16-year blockade of Gaza as the most far-reaching collective punishment inflicted on Palestinians in the OPT.⁵⁶⁴ The fact that the blockade of Gaza constitutes an egregious form of collective punishment against Palestinians is confirmed by several other Written Statements. An illustrative selection of excerpts is provided below.

(a) **Algeria:**

“L’une des violations les plus notables du Droit International Humanitaire est le blocus de Gaza, bande terrestre densément peuplée qui fait partie intégrante du territoire palestinien. Le bouclage et le blocus terrestre, maritime et aérien de Gaza, qui constituent une peine collective, sont entrés dans leur seizième année, et continuent d’avoir des répercussions extrêmement néfastes sur la liberté de circulation et sur l’exercice des droits économiques, sociaux et culturels, y compris les droits à un niveau de vie suffisant, à la santé, à l’éducation, au travail et à la vie de famille.”⁵⁶⁵

(b) **Colombia:**

“Certainly, the restrictions on movement of people and goods continue to collectively punish the civilian population, affecting every aspect of life in Gaza, undermining the local economy, and threatening the enjoyment of most human rights, in clear violation of Israel’s legal obligations under international law. The blockade is increasing violence and conflict, worsening the socio-economic and psychosocial crisis in Gaza, a war-ravaged, poverty-stricken area, living under a tight illegal blockade on land, air, and sea.”⁵⁶⁶

⁵⁶⁴ See Written Statement of the State of Palestine, paras. 4.192-4.202.

⁵⁶⁵ Written Statement of Algeria, p. 34 (footnotes omitted) (unofficial translation: “One of the most notable violations of International Humanitarian Law is the blockade of Gaza, a densely populated strip of land that is an integral part of Palestinian territory. The closure and land, sea and air blockade of Gaza, which constitute a collective punishment, have entered their sixteenth year, and continue to have repercussions extremely harmful to freedom of movement and the exercise of the economic rights, social and cultural rights, including the rights to an adequate standard of living, health, education, work and family life.”).

⁵⁶⁶ Written Statement of Colombia, para. 4.8.

(c) Cuba:

“We have all witnessed the strengthening of the blockade by land, air and sea and the closing of Gaza. These actions are considered a collective punishment and are extreme violations of the freedom of movement and the enjoyment of the economic, social and cultural rights, such as the right to an adequate standard of living, health, education, work and family life by the Palestinian people. Collective punishment is expressly prohibited by the International Humanitarian Law and is incompatible with several international human rights law provisions.”⁵⁶⁷

(d) Egypt:

“Israel’s continuing military incursions and control of Gaza’s borders indicate that Israel is still exerting authority over the territory. Israel’s continued control over the Gaza Strip is considered by the UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 to be a form of collective punishment.”⁵⁶⁸

(e) Namibia:

“Israel’s policies and practices in the Gaza Strip have serious detrimental consequences for Palestinians. The denial of freedom of movement, including preventing and delaying access to medical appointments for chemotherapy and other treatments, as well as the prevention of the besieged occupied population from accessing basic humanitarian supplies including the provision of adequate fuel supply, electricity, water and sanitation, amount to collective punishment.”⁵⁶⁹

(f) Organisation of Islamic Cooperation:

“Les mesures constitutives de blocus constituent la seconde illégalité attribuable à Israël en ce qui concerne la situation faite à la Bande de Gaza. ... Il s’agit d’une ‘politique susceptible de constituer une peine collective’.”⁵⁷⁰

⁵⁶⁷ Written Statement of Cuba, p. 7 (footnotes omitted).

⁵⁶⁸ Written Statement of Egypt, para. 241 (footnote omitted).

⁵⁶⁹ Written Statement of Namibia, para. 76 (footnote omitted).

⁵⁷⁰ Written Statement of the Organisation of Islamic Cooperation, Vol. I, para. 283 (footnote omitted) (unofficial translation: “The blockade measures constitute the second illegality attributable

(g) Qatar:

“The Palestinians of Gaza are effectively confined in the ‘world’s largest open air prison’, amounting to a ‘severe deprivation of physical liberty in violation of fundamental rules of international law’. The blockade of Gaza is also akin to a form of persecution in that it discriminatorily deprives Palestinians of their most fundamental human rights. Furthermore, Israel’s control and isolation of Gaza is a key tool in its apartheid regime of racial domination and oppression.”⁵⁷¹

4.24. Since those Written Statements were filed, Israel has intensified the collective punishment against the Palestinian population of the Gaza Strip to a wholly unprecedented level, inflicting grave humanitarian suffering.

4.25. As explained above,⁵⁷² following the attack on 7 October, Israel deliberately chose to undertake reprisals against the entire Palestinian population in the Gaza Strip, in grave breach of international humanitarian law. Israeli President Isaac Herzog defended this unlawful policy:

“It is an entire nation out there that is responsible ... It is not true this rhetoric about civilians not being aware, not involved. It’s absolutely not true.”⁵⁷³

4.26. On 13 October 2023, the International Committee for the Red Cross (ICRC) issued a statement that:

“The instructions issued by the Israeli authorities for the population of Gaza City to immediately leave their homes, coupled with the complete siege explicitly denying them food, water, and electricity, are not compatible with international humanitarian law”.⁵⁷⁴

4.27. As of 25 October 2023, this “complete siege” on Gaza was still in effect.

4.28. The conclusion that Israel is inflicting collective punishment on the Palestinian inhabitants of the Gaza Strip – and that this forms part of a regime of

to Israel with regard to the situation in the Gaza Strip ... This is a ‘policy likely to constitute a collective punishment’.”).

⁵⁷¹ Written Statement of Qatar, Vol. I, para. 3.185 (footnotes omitted).

⁵⁷² See above paras. 15-23.

⁵⁷³ Press conference, 13 October 2023 (<https://tinyurl.com/4952ksrn>).

⁵⁷⁴ ICRC statement, 13 October 2023 (<https://tinyurl.com/2vhp5999>).

systematic racial discrimination against Palestinians throughout the OPT – is thus inescapable.

II. Persecution and Discrimination Against Palestinians

4.29. The Written Statements reflect an overwhelming consensus that the Israeli occupation's denial of the fundamental rights of Palestinians under international human rights and international humanitarian law is compounded by discrimination. Indeed, no fewer than 26 States and all three international organizations conclude that Israel has committed gross violations of international humanitarian law and international human rights law against Palestinians and has adopted discriminatory legislation and measures against them that deprive them of these rights.⁵⁷⁵ Not a single State or organization has argued otherwise.

4.30. General Assembly resolution 77/247 requests the Court to give an Advisory Opinion on the legal consequences, *inter alia*, of the adoption by Israel of "related discriminatory legislation and measures." In its Written Statement the **United Kingdom** complains that the resolution provides "no specific identification of any of the 'measures' or alleged 'related discriminatory legislation and measures'. That is left entirely to the Court."⁵⁷⁶ This is not correct. The word "measures" clearly refers to actions taken by Israel's occupying forces and settlers against Palestinians "which constitute a denial of fundamental human rights" based on race, colour, descent or national or ethnic origin.⁵⁷⁷ Consequently it includes acts that violate the rights of Palestinians in the OPT under international human rights and humanitarian law. Other States and international organizations have had no difficulty identifying these acts and denouncing them as violations of international law. Examples include:

⁵⁷⁵ Written Statements of Algeria, pp. 30-44; of Bangladesh, para. 31; of Belize, pp. 32-47, 54; of Bolivia, pp. 4, 7-13; of Brazil, paras. 39-40; of Chile, paras. 96-107; of China, paras. 22, 33-35; of Colombia, paras. 4.8-4.10; of Cuba, p. 7; of Djibouti, paras. 32-52; of Egypt, paras. 277-282; of France, paras. 60-65; of Indonesia, paras. 28-39; of Ireland, paras. 12-46; of Jordan, paras. 4.96-4.173; of Kuwait, paras. 2, 14; of Lebanon, paras. 35-52; of Maldives, paras. 36-41; of Pakistan, paras. 65-84; of Qatar, Vol. I, paras. 3-24-3.163; of the Russian Federation, para. 72; of Saudi Arabia, paras. 57-73; of Senegal, pp. 4-5; of Switzerland, para. 55; of Syria, paras. 21, 25; of Yemen, paras. 11, 15; of the African Union, paras. 137-193; of the League of Arab States, paras. 76-91; and of the Organisation of Islamic Cooperation, Vol. I, paras. 307-343.

⁵⁷⁶ Written Statement of the United Kingdom, para. 64.

⁵⁷⁷ *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*, p. 57, para. 131.

(a) African Union:

“The overall result is that Israel’s prolonged occupation ... is subjecting the Palestinian people in the occupied territories to alien domination, systematic discrimination, and the denial of their basic human rights.”⁵⁷⁸

(b) Belize:

“Israel has imposed a system of institutionalised discrimination against Palestinians in clear violation of international human rights and humanitarian law in order to maintain and further its illegal occupation, settlement and annexation practices and policies, and its denial of the right of the Palestinian people to self-determination.

.....

The impact of the discriminatory and coercive policies and measures imposed on the Palestinian people is immense and far-reaching, and severely deprives Palestinians of their fundamental rights.

.....

These measures manifestly prevent the Palestinian people from participating in the political, social, economic and cultural life of Israel and of the Palestinian territory, and from developing fully. They are not isolated measures or discrete violations of basic human rights. Their breadth and consistency, in the Palestinian territory and in Israel itself, demonstrate that they form part of an institutionalised regime and are a means through which Israel seeks to control, oppress and dominate Palestinians and to maintain that domination.”⁵⁷⁹

(c) Bolivia:

“The *de facto* annexation of territory imposes restrictions on where Palestinians can live and travel, and imposition of a racially discriminatory legal and administrative regime that favors Israeli settlers and deprives Palestinians of their fundamental rights.”⁵⁸⁰

⁵⁷⁸ Written Statement of the African Union, para. 193 (footnote omitted).

⁵⁷⁹ Written Statement of Belize, paras. 54, 56 and 69 (footnotes omitted).

⁵⁸⁰ Written Statement of Bolivia, p. 14.

(d) Chile:

“[T]he UN High Commissioner for Human Rights has documented patterns of systematic discrimination in law, policy and practice by Israel, encompassing almost every sphere of life for the Palestinians. He has reported discriminatory law enforcement practices, discriminatory provision of building permits, discriminatory policies on demolitions and forced evictions, discriminatory laws on confiscation, and discriminatory Israeli land and planning policies and measures. ...

The Human Rights Council has also denounced Israel’s discriminatory policies and practices. In its latest Resolution on the topic (Resolution 52/3), which was co-sponsored by Chile, the Council noted that the Israeli policy of closures, the imposition of severe restrictions and checkpoints, and the permit regime were applied in a discriminatory manner affecting the Palestinian population. Therefore, it demanded that Israel ceases its illegal actions including the forcible transfer of Palestinian inhabitants and the revocation of residency permits of Palestinians living in East Jerusalem through various discriminatory laws; and urged Israel to ensure that water resource allocation in the OPT is not discriminatory, amongst other measures.

All these measures have been imposed within a normative framework put in place by the State of Israel, which includes the enactment of legislation and administrative measures ...”⁵⁸¹

(e) China:

“China notes that the UN General Assembly Resolution 77/247 expresses, in the preamble, grave concern about the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, and points out, in paragraph 2, that the policies and practices of Israel in the Occupied Palestinian Territory, including, *inter alia*, the killing and injuring of civilians, the arbitrary detention and imprisonment of civilians, the forced displacement of civilians, the destruction and confiscation of civilian property, the depletion of natural resources, and the enactment of discriminatory legislation and measures, violate the human rights of the Palestinian people.”⁵⁸²

⁵⁸¹ Written Statement of Chile, paras. 103-105 (footnotes omitted).

⁵⁸² Written Statement of China, para. 35 (footnotes omitted).

(f) Djibouti:

“La politique d’occupation et de colonisation menée par la partie israélienne s’accompagne de l’instauration d’un régime de discrimination systématique envers la population palestinienne, visant à favoriser les colons juifs israéliens ...”⁵⁸³

(g) Egypt:

“Israel has adopted discriminatory legislation and measures in the Palestinian Territories occupied in 1967. This includes numerous Military Orders that entrench racial discrimination between Palestinians, on the one hand, and Israeli settlers, on the other. Israel implements both *de facto* and *de jure* measures of racial discrimination, including in the areas of detention, criminal justice and procedure, housing, urban planning and zoning, land confiscations and house demolitions, in addition to the obstruction of freedom of movement.”⁵⁸⁴

(h) France:

“L’établissement d’un statut séparé, dans le cadre d’une situation d’occupation, ne peut dès lors servir de justification à l’adoption de mesures ou législations discriminatoires. Or, la situation actuelle dans les territoires palestiniens occupés soulève d’importantes difficultés au regard de cette obligation de non-discrimination. Ces mesures concernent de nombreux aspects de la vie quotidienne des individus dans les territoires occupés (citoyenneté, accès à la propriété et au logement, éducation, soins de santé, liberté de circulation, fiscalité, transports, sécurité, etc.). En particulier, un système de justice militaire s’applique aux Palestiniens en Cisjordanie, et non aux colons juifs.”⁵⁸⁵

⁵⁸³ Written Statement of Djibouti, para. 20 (unofficial translation: “The policy of occupation and colonization carried out by the Israeli side is accompanied by the establishment of a regime of systematic discrimination against the Palestinian population, aimed at favoring Jewish Israeli settlers ...”).

⁵⁸⁴ Written Statement of Egypt, para. 277.

⁵⁸⁵ Written Statement of France, para. 65 (unofficial translation: “The establishment of a separate status, in the context of an occupation situation, cannot therefore serve as a justification for the adoption of discriminatory measures or legislation. However, the current situation in the occupied Palestinian territories raises significant difficulties with regard to this obligation of non-discrimination. These measures concern many aspects of the daily life of individuals in the occupied territories (citizenship, access to property and housing, education, health care, freedom of

(i) Indonesia:

“Israel is continuously imposing discriminatory policies and practices in the OPT, including East Jerusalem. Such imposition of discriminatory policies and practices include the establishment of (1) a discriminatory bifurcated legal regime; and (2) oppressive military rule; which (3) have evolved into an apartheid policy.

.....

Israel’s continuous consolidation of its discriminatory policies is a manifestation of its attempts to establish and maintain dominance over the Palestinian people. Israel maintains a political system that endows the settlers with substantial rights, benefit and privileges, whilst at the same time effectively and unavoidably placing the Palestinian population as subjugated aliens in their own lands. Palestinians are forced to live behind walls and checkpoints and under permanent military occupation ... without rights, without equality, without dignity, and without freedom.”⁵⁸⁶

(j) Jordan:

“The purpose and effect of the legislation adopted by Israel in the Occupied Palestinian Territory are clear – to maintain the people of Palestine in an inferior position, and to severely restrict their enjoyment of human rights and fundamental freedoms in the civil, political, economic, social, cultural, and any other field of public life.”⁵⁸⁷

(k) League of Arab States:

“Multiple UN treaty bodies have expressed grave concerns with regards to Israeli discriminatory policies and practices against the Palestinian people More recently in 2020, the CERD noted with concern the ‘existence in the OPT of two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand’.”⁵⁸⁸

movement, taxation, transport, security, etc.). In particular, a military justice system applies to Palestinians in the West Bank, not to Jewish settlers.”)

⁵⁸⁶ Written Statement of Indonesia, paras. 27 and 38.

⁵⁸⁷ Written Statement of Jordan, para. 4.138.

⁵⁸⁸ Written Statement of the League of Arab States, para. 91 (footnote omitted).

(l) Namibia:

“Since 1948, Israel has adopted discriminatory laws, policies and practices against the Palestinian people as a whole.

.....

These measures and practices constitute an institutionalized system where two groups of people subject to Israel’s jurisdiction are treated in radically different ways.”⁵⁸⁹

(m) Qatar:

“Palestinians face extreme discrimination in the enjoyment of their most basic civil, political, economic, social and cultural rights. As described throughout Chapter 2, not only does Israel impose *de jure* discrimination through its dual legal system, it also enforces policies severely depriving Palestinians of land, water, food, housing, healthcare, economic opportunities and freedom of movement. This is accompanied by routine and extreme acts of violence, incitement and hate speech, and the deliberate targeting and erasure of Palestinian religion and culture. Cumulatively, these measures mean that, by virtue of their identity, Palestinians are either driven from their homes due to dire living conditions, or are forced to face daily indignities in their own homeland. They amount to persecution and the Court should so declare.”⁵⁹⁰

(n) South Africa:

“The Committee on the Elimination of Racial Discrimination concluded that there exists in the Occupied Palestinian Territory ‘two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is appalled at the hermetic character of the separation of the two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services, land and water resources. Such separation is materialised by the implementation of a complex combination of movement restrictions consisting of the wall, the settlements, roadblocks, military checkpoints, the obligation to use separate roads and a permit regime that impact the Palestinian population negatively’.

⁵⁸⁹ Written Statement of Namibia, paras. 68 and 77 (footnote omitted).

⁵⁹⁰ Written Statement of Qatar, Vol. I, para. 3.189.

.....

For over seventy years, various United Nations resolutions, reports of Special Rapporteurs and human rights organisations have deplored the egregious discriminatory treatment of Palestinians in the Occupied Palestinian Territory, including in Gaza and East Jerusalem. These discriminatory laws and practices have only become more entrenched, systematic and deliberate as Israel’s illegal occupation continues.

.....

Israel’s discriminatory treatment of Palestinians must be viewed in its totality: it has created and maintained an institutionalised regime of systematic oppression wherever it controls territory, fuelled by demographic considerations that continue to shape its policies towards Palestinians. These manifest in the different sets of discriminatory and exclusionary laws, policies, and practices which intentionally serve to oppress and dominate Palestinians, to maximise the benefit to Jewish Israelis and to create a Jewish majority which is privileged in every respect.”⁵⁹¹

4.31. Many of the Written Statements also confirm the close connection – which Palestine identified in its Written Statements⁵⁹² – between Israel’s systematic racial discrimination against Palestinians and Israel’s violation of the right to self-determination of the Palestinian people. For example, the **African Union** states that Israel’s “discriminatory legislative and administrative measures and oppressive practices ... continue to deprive the Palestinian people of the ability to exercise their right to self-determination”.⁵⁹³ **Belize** explains that “Israel’s system of institutionalized discrimination and apartheid against Palestinians ... thwart[s] the exercise of the right to self-determination”.⁵⁹⁴ **China** likewise observes that Israel’s “relevant discriminatory legislation” is one of the factors which “have seriously impeded the realization of the right to self-determination of the Palestinian people ...”.⁵⁹⁵ **Indonesia** similarly states that “[t]he institutionalization of discriminatory policies and practices in the OPT ... provides greater enjoyment and livelihoods for Israelis at the expense of the right to self-determination of the Palestinian people.”⁵⁹⁶ **Namibia** observes that “[t]he Palestinian people have been deliberately prohibited from gathering and exercising their inalienable and

⁵⁹¹ Written Statement of South Africa, paras. 94, 96 and 117 (footnotes omitted).

⁵⁹² See Written Statement of the State of Palestine, paras. 5.1, 5.5, 5.40, 5.60 and 5.86.

⁵⁹³ Written Statement of the African Union, para. 192.

⁵⁹⁴ Written Statement of Belize, para. 24.

⁵⁹⁵ Written Statement of China, para. 45.

⁵⁹⁶ Written Statement of Indonesia, para. 28.

collective right to self-determination as a result of decades of imposed strategic fragmentation, placing them in different legal and administrative domains and across various spatial geographies in Palestine and exile, by virtue of Israel's regime of racial discrimination and domination."⁵⁹⁷ Similar observations are made by the African Union⁵⁹⁸, Qatar⁵⁹⁹, South Africa⁶⁰⁰ and Syria⁶⁰¹.

4.32. Israel has continuously rejected any meaningful attempt to end the occupation and its entrenched system of racial discrimination, as confirmed by its refusal to participate in the conciliation procedure under Articles 11-13 of the Convention for the Elimination of Racial Discrimination (CERD), a procedure which Palestine initiated in 2018, and which aims at bringing to an end the discriminatory legislation and measures now before the Court in these proceedings.⁶⁰²

III. Racial Discrimination Constituting Apartheid

4.33. In Chapter 4, Section III of its Written Statement Palestine explained why Israel's racial discrimination against the Palestinian people amounts to a violation of the *jus cogens* prohibition of apartheid. Support for that conclusion is provided by the Written Statements of other States and international organizations, which demonstrate that (1) the prohibition of apartheid is a *jus cogens* rule of international law; and (2) Israel has systematically violated that norm by subjecting the Palestinian people to a regime of racial discrimination and subjugation amounting to apartheid. Indeed, in addition to the State of Palestine, no fewer than 21 of the other Written Statements submitted to the Court expressly conclude that Israel is committing apartheid in the OPT.⁶⁰³

⁵⁹⁷ Written Statement of Namibia, para. 149.

⁵⁹⁸ Written Statement of the African Union, para. 163.

⁵⁹⁹ Written Statement of Qatar, Vol. I, para. 1.11.

⁶⁰⁰ Written Statement of South Africa, para. 95.

⁶⁰¹ Written Statement of Syria, para. 22.

⁶⁰² Note Verbale from Israel, 24 July 2023.

⁶⁰³ As explained below, the Written Statements from the following States and organizations conclude that Israel is committing apartheid: Algeria, Bangladesh, Belize, Bolivia, Chile, Cuba, Djibouti, The Gambia, Indonesia, Jordan, Kuwait, the League of Arab States, Lebanon, Namibia, the Organisation of Islamic Cooperation, Pakistan, the State of Palestine, Qatar, Saudi Arabia, South Africa, Syria and Yemen.

A. WIDESPREAD RECOGNITION OF THE *JUS COGENS* PROHIBITION ON APARTHEID

4.34. The prohibition of Apartheid is by treaty⁶⁰⁴ and custom⁶⁰⁵ binding on Israel. In addition, this prohibition is recognized as peremptory norm. Palestine highlighted the *jus cogens* status of the prohibition of apartheid in its Written Statement.⁶⁰⁶ That *jus cogens* status is emphasised in the Written Statements of at least eleven other States and organizations. **Namibia**, for example, highlights the “crucial feature [of] the status of the prohibition of apartheid in customary international law as a peremptory norm of general international law.”⁶⁰⁷ It notes that the ILC’s Fourth Report on Peremptory Norms of General International Law concluded that there was “ample State practice recognizing the prohibition of apartheid and racial discrimination as a peremptory norm of general international law”. It also notes that there is “no State on record defending the lawfulness of imposing such a regime of racial domination.”⁶⁰⁸ In a similar vein, **Qatar** explains that:

“Not only is the customary status of the prohibition of apartheid beyond doubt, but also there is, in the words of the ILC, “widespread agreement” that the prohibition of apartheid constitutes a peremptory norm of international law (*jus cogens*). ... [I]t has become one of the “most cited norms of *jus cogens*”. This is only logical given that apartheid constitutes one of the most severe manifestations of racial discrimination, the prohibition of which also constitutes a peremptory norm.”⁶⁰⁹

4.35. **Saudi Arabia** agrees that:

“The prohibition against racial discrimination generally and the prohibition of *apartheid* in particular are also *jus cogens* norms generating *erga omnes*

⁶⁰⁴ Israel is bound to prohibit apartheid in terms of Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination. Furthermore, the practice of apartheid violates the Charter of the United Nations: *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*, p. 57, para. 131.

⁶⁰⁵ M. Jackson, “The definition of apartheid in customary international law and the International Convention on the Elimination of All Forms of Racial Discrimination”, *International and Comparative Law Quarterly*, Vol. 71, No. 4, October 2022, pp. 831-855, in particular 835.

⁶⁰⁶ See the Written Statement of the State of Palestine, paras. 2.47-2.48.

⁶⁰⁷ Written Statement of Namibia, para. 122.

⁶⁰⁸ *Ibid.*, para. 123.

⁶⁰⁹ Written Statement of Qatar, Vol. I, para. 4.56.

obligations. Through its policies and practices in the Occupied Palestinian Territory, Israel is in grave violation of these obligations.”⁶¹⁰

4.36. The *jus cogens* character of the prohibition of apartheid is also underscored by Bangladesh⁶¹¹, The Gambia⁶¹², Jordan⁶¹³, the League of Arab States⁶¹⁴, Lebanon⁶¹⁵, Pakistan⁶¹⁶, South Africa⁶¹⁷ and Yemen⁶¹⁸.

B. WIDESPREAD RECOGNITION THAT ISRAEL IS COMMITTING APARTHEID

4.37. As noted above, not less than 21 States and organizations expressly support the State of Palestine’s contention that Israel’s regime of racial discrimination against Palestinians constitutes apartheid. It is significant that these include two States – Namibia and South Africa – each of which have direct experience and profound understanding of what constitutes an apartheid regime, having endured the torment and suffering of this crime against humanity for decades. The Written Statements of Namibia and South Africa, which analyse the law and facts pertaining to apartheid in considerable detail, both reach the unequivocal and emphatic conclusion that Israel has violated – and is continuing to violate – the *jus cogens* prohibition of apartheid by means of its policies and practices against the Palestinian people.

4.38. **South Africa** is clear that: “Israeli discriminatory and inhuman treatment of Palestinians has reached the threshold of apartheid within the meaning ascribed to it in the Apartheid Convention.”⁶¹⁹ South Africa draws direct parallels between Israel’s treatment of Palestinians in the OPT and the apartheid regime which existed in South Africa for more than four decades between 1948 and 1994:

“The Palestinian reality evokes experiences of South Africa’s own history of racial segregation and oppression. There exists in the Occupied Palestinian Territories an institutionalised and oppressive system of Israeli

⁶¹⁰ Written Statement of Saudi Arabia, para. 30 (emphasis in the original) (footnotes omitted).

⁶¹¹ Written Statement of Bangladesh, para. 31(ii).

⁶¹² Written Statement of the Gambia, para. 1.9.

⁶¹³ Written Statement of Jordan, Vol. I, para. 5.13.

⁶¹⁴ Written Statement of the League of Arab States, para. 76.

⁶¹⁵ Written Statement of Lebanon, paras. 18-19.

⁶¹⁶ Written Statement of Pakistan, para. 3(b)(iv).

⁶¹⁷ Written Statement of South Africa, para. 105.

⁶¹⁸ Written Statement of Yemen, para. 15.

⁶¹⁹ Written Statement of South Africa, para. 111.

domination over Palestinians as a group. These policies have their genesis in the creation of the State of Israel in 1948 and have been extended to the Occupied Territories after the 1967 Six Day War.

We concur with the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, in her most recent report, 115 that “the recognition of Israeli apartheid must address the experience of Palestinian people in its entirety and in their unity as a people, including those who were displaced, denationalised and dispossessed in 1947-1949 (many of whom live in the occupied in Palestinian territory).

.....

[N]ot only does Israel continue to fail to provide adequate protection of a protected population with international status under international law, but that it in fact continues to impose an institutionalised regime of systematic racial oppression and discrimination against the people of Palestine which satisfies the prevailing evidentiary standard of the international **crime of apartheid.**”⁶²⁰

4.39. South Africa goes on to provide the following stark – but accurate – description:

“As to the institutionalised and systematic nature of Israel’s discrimination against and domination of the Palestinian group, it is South Africa’s contention that similar to the South African experience, the crime of apartheid is being committed against one group (the Palestinians) by another (Jewish group) to create a superior, privileged group, whose position is elevated through two-tiered systems and benefits reserved for such group through the granting of superior rights and privileges. This system is not random or isolated but widespread and oppressive, in a manner that is institutional and systemic, albeit dispersed among the fragmented Occupied Palestinian Territory.

.....

The only conclusion to draw is that these policies seek to advance the Jewish nation whose privilege can only be maintained through the dispossession and fragmentation of Palestinian land, the economic and political malignment of Palestinians, restrictions on their movement, the denial of their dignity and absence of legal protection through arbitrary laws and military orders. This reality is reminiscent of apartheid South Africa and the

⁶²⁰ *Ibid.*, paras. 91-92 and 101.

way in which the white minority government implemented the crime against humanity of apartheid to advance the white population through the oppression of the majority black population in South Africa between 1948 and 1994.”⁶²¹

4.40. **Namibia**, whose position is informed by “its own historical experience of systematic racial discrimination imposed by South Africa”⁶²², is equally clear in its conclusion that: “Israel’s policies and practices violate the prohibition of apartheid”.⁶²³ In particular, Namibia concludes that: “[Israel] has imposed a system of apartheid on (i) Palestinians within the Occupied Palestinian Territory, specifically, and (ii) the Palestinian people, as a whole.”⁶²⁴

4.41. In respect of the material elements in Article 2(c) of the Apartheid Convention, Namibia highlights the fact that Israel:

“(a) has denied Palestinian refugees, displaced persons, and exiles their right to return to their homes, lands, and properties since 1948 on the basis of their racial identity; (b) discriminates against Palestinian citizens, for the benefit of Jewish nationals, including through the period of military rule from 1948 until 1966 and through ongoing racial oppression and domination; (c) controls the Palestinian people in the occupied West Bank under the laws of occupation; (d) treats Palestinians in occupied East Jerusalem as ‘permanent residents’, a temporary and revocable residency status, and (e) treats the occupied Gaza Strip as an ‘enemy entity’ with severe repercussions on the Palestinians living there.”⁶²⁵

4.42. In respect of the material element of Article 2(d) of the Apartheid Convention, Namibia undertakes a detailed analysis of “Israel’s imposition of measures that are designed to divide the population along racial lines by the creation of separate reserves for Palestinians, as well as the expropriation of landed property belonging to Palestinians.”⁶²⁶ The measures identified by Namibia include the construction of illegal settlements in East Jerusalem and the West Bank, the denial of family reunification for Palestinians, the confinement of Palestinians in Gaza via

⁶²¹ *Ibid.*, paras. 116 and 118.

⁶²² Written Statement of Namibia, para. 7(c).

⁶²³ *Ibid.*, para. 5. See also para. 55 (“Namibia submits that Israel is in breach of its obligations under the customary prohibition of apartheid and Article 3 of ICERD”).

⁶²⁴ *Ibid.*, para. 55.

⁶²⁵ *Ibid.*, para. 65.

⁶²⁶ *Ibid.*, para. 82.

the blockade, and the extensive demolitions of Palestinian property and expropriation of Palestinian land.⁶²⁷

4.43. Namibia identifies various factors which lead inexorably to the conclusion that these acts were committed “for the purpose of establishing and maintaining domination by one racial group of persons over [another] racial group of persons and systematically oppressing them”. Those factors include: (i) the acts “are directed against Palestinians in the Occupied Palestinian Territory, Palestinians in Israel and Palestinian refugees and exiles on account of their identity - that is, their membership of the Palestinian people”; (ii) the acts “are being undertaken at an immense scale, and are being imposed in an institutionalized manner that creates a system of coercion and cruelty”, pursuant to “legislative and administrative policy choice[s] at the highest levels of the Israeli State”; (iii) the acts take place in an occupation which has lasted since 1967 and which has seen an “escalation of discriminatory acts in recent years” which evidences “an intention to maintain in place the existing regime of racial domination” and (iv) they take place amid “a context of dehumanizing language and contempt directed at the Palestinian people, as a group”⁶²⁸. Namibia explains that:

“Taken together, there is only one inference that can reasonably be drawn from the facts and the wider context. It is that these inhuman acts of apartheid are being undertaken for the purpose of establishing and maintaining domination by Jewish Israelis in the Occupied Palestinian Territory and Israel over Palestinians in the Occupied Palestinian Territory and the Palestinian people as a whole and systematically oppressing them.”⁶²⁹

Namibia notes that the Concluding Observations of the CERD Committee to Israel in 2019 “point to policies and practices of racial discrimination, segregation and apartheid as affecting the Palestinian population across two jurisdictions, both in Israel and the Occupied Palestinian Territory”⁶³⁰.

4.44. Namibia concludes that:

“Israel’s measures and practices against Palestinians in the Occupied Palestinian Territory, including East Jerusalem, and Israel breach the prohibition of apartheid in customary international law and breach the

⁶²⁷ *Ibid.*, paras. 82-93.

⁶²⁸ *Ibid.*, para. 116.

⁶²⁹ *Ibid.*, para. 118.

⁶³⁰ *Ibid.*, para. 52.

obligation in Article 3 of ICERD to ‘prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction’:

- a. First, these measures and practices fulfil the material element of apartheid, as set out in Articles 2(c) and 2(d) of the Apartheid Convention. Together with other discriminatory acts entailing violations of the rights of Palestinians, these measures and practices constitute a prolonged and ongoing regime of racial domination and oppression.
- b. Second, these measures and practices are committed against members of a racial group - Palestinians in the Occupied Palestinian Territory and the Palestinian people as a whole.
- c. Third, these measures and practices are committed with apartheid's specific intent. They are committed for the purpose of establishing and maintaining domination by Jewish Israelis in the Occupied Palestinian Territory and Israel over Palestinians in the Occupied Palestinian Territory and the Palestinian people as a whole and systematically oppressing them.’⁶³¹

4.45. Many other Written Statements express the same conclusion in equally unequivocal terms. The following excerpts provide a representative sample of the conclusions reached by the 21 States and organizations which agree with Palestine that Israel is committing apartheid in the OPT:

(a) **Belize:**

“The evidence that Israel is committing apartheid is compelling.

.....

Israel has implemented measures calculated to prevent Palestinians from participating in the political, social, economic and cultural life of Israel and of the Palestinian territory, and has deliberately created conditions seeking to prevent the full development of the Palestinian people. This is evidenced by Israel’s long-standing discriminatory laws, policies and practices that adversely affect only Palestinians and are designed to benefit exclusively, and maintain the dominance of, Israeli Jews, including in respect of: land rights; property rights; housing; access to natural resources including water; being subjected to the use of excessive (including lethal) force; being subjected to arbitrary arrest and detention; being subjected to unfair military

⁶³¹ *Ibid.*, para. 120.

courts; restrictions on freedom of movement (including by virtue of the separation wall, restrictive permit requirements, checkpoints, the segregation of roads in the West Bank, the exclusion from access-restricted areas and the imposition on Gaza of periods of total closure); restrictions on access to healthcare, education, work, and basic goods and services; restrictions on participation in public affairs; restrictions on freedom of opinion, expression, association and assembly; restrictions on freedom to manifest religion; and the continuing denial since 1948 of the right of Palestinians and their descendants to return to their country and property in Israel or in the Palestinian territory, which denial is maintained by discriminatory Israeli legislation on entry, nationality and property.

.....

Israel is accordingly committing apartheid against the Palestinian people in denial of their right to self-determination.

Successive United Nations Special Rapporteurs on the situation of human rights in the Palestinian territories occupied since 1967 agree with this assessment, and have for more than a decade concluded that Israel's policies and practices in respect of the Palestinian people constitute apartheid."⁶³²

(b) Bolivia:

"The settlements and their associated regime, involving the transfer of Israeli citizens to the settlements while forcibly displacing Palestinian families and communities, implementing a policy of population engineering of the occupied territory, and violating and denying the Palestinian people's right to self-determination, including subjugating Palestinian people through a system of foreign military rule and Apartheid designed to persecute and discriminate against them constitute a violation of international law."⁶³³

(c) Chile:

"Already in 2004, Special Rapporteurs had noted that the policies and practices of Israel in the OPT had violated international humanitarian law and the human rights of the Palestinian population. However, the situation aggravated in such a manner that, by 2007, the situation could be described as one of colonization and apartheid. ...

⁶³² Written Statement of Belize, paras. 66 and 68, 71-72.

⁶³³ Written Statement of Bolivia, p. 4.

The 2014 Report by Special Rapporteur Falk describes the situation of the prolonged occupation of Palestine as a case of colonialism, apartheid, and ethnic cleansing.

.....

In its End of Mission Statement of 16 June 2023, the Special Committee stated that: ‘This year, the Special Committee was presented with the clearest evidence it has seen in its 55-year history of Israeli policies that systematically violate the human rights of the Palestinian people in a manner many interlocutors see as akin to apartheid.’”⁶³⁴

(d) **Gambia:**

“An institutionalized system of discrimination, with dual legal and political systems for Israeli settlers and Palestinians—otherwise known as apartheid—has become entrenched. ...

Israel’s occupation of the OPT is also illegal because it amounts to a regime of apartheid. ...

As a regime of apartheid, Israel’s occupation of the OPT is illegal and must urgently be brought to an end.”⁶³⁵

(e) **Indonesia:**

“Israel’s discriminatory policies have evolved into an apartheid policy. ...

Israel’s continuous consolidation of its discriminatory policies is a manifestation of its attempts to establish and maintain dominance over the Palestinian people. Israel maintains a political system that endows the settlers with substantial rights, benefit and privileges, whilst at the same time effectively and unavoidably placing the Palestinian population as subjugated aliens in their own lands. ...

Furthermore, the Palestinian people are stripped of their self-sufficiency and hostage to a vicious cycle of dependency on both their economy and international aid, all due to the systematic Israeli restrictions. In practice, such discriminatory policies and oppression may well effectively put the Palestinian people into perpetual domination. Therefore, the intensity and

⁶³⁴ Written Statement of Chile, paras. 46-47 and 34.

⁶³⁵ Written Statement of the Gambia, paras. 1.3, 1.9 and 1.15.

the systematic discrimination of Palestinians through policies and oppression amount to apartheid ... ”.⁶³⁶

(f) **Kuwait:**

“[Israel] has breached its legal obligations, and instead created a dual legal, social and political system with full political legal rights to its settler population unlawfully transferred to the occupied territory and a denial of all basic rights to the protected population. This dual legal system amounts to apartheid.

... With robust parallels to the illegal mandate rule of apartheid South Africa over Namibia, Israeli occupation is in fundamental breach of its international obligations and the most fundamental rules of international law and its presence in the occupied territory is illegal.”⁶³⁷

(g) **League of Arab States:**

“Israel is in violation of the international law prohibition of apartheid through the creation and perpetuation of discriminatory policies and practices that are systematically applied to the Palestinian people, with the intention of creating a regime of Jewish supremacy over the Palestinian people. This conclusion was affirmed by multiple Palestinian, Israeli and international human rights organizations in reports that have documented, in great detail, Israeli policies and practices that amount to apartheid, including Al-Haq, Al-Mezan, B’Tselem, Yesh Din, Human Rights Watch, Amnesty International, and others.”⁶³⁸

(h) **Pakistan:**

“Israel’s deployment of a dual legal system in the OPT, and the resulting systematic discrimination against Palestinians and subordination of Palestinians’ civil and political rights to the rights of Jewish Israeli citizens settled in the OPT, amount to a breach of the prohibition of apartheid under international law.

Apartheid involves commission of specified inhuman acts with an intent to dominate. The totality of Israeli actions and policies in the OPT manifests an intent to establish and maintain Jewish domination and suppression of

⁶³⁶ Written Statement of Indonesia, paras. 37-39.

⁶³⁷ Written Statement of Kuwait, paras. 33-34.

⁶³⁸ Written Statement of the League of Arab States, para. 89.

Palestinians. Since 1967, Israel has put in place institutions, legal instruments, and mechanisms that systematically discriminate against Palestinians in the OPT, enshrine Jewish supremacy, suppress Palestinians' exercise of their civil and political rights, and deny Palestinians' basic human rights and freedoms.”⁶³⁹

(i) **Qatar:**

“Israel’s occupation - by virtue of its purpose and associated policies and practices - can only be viewed as an institutionalized regime of apartheid ... As a consequence, the occupation as a whole is illegal and its ongoing maintenance entails a breach of a peremptory norm ...

.....
 Israel has engaged in numerous “inhuman acts” enumerated in the Apartheid Convention ...

[A]ll of the foregoing inhumane acts are regularly carried out against Palestinians in the context of, and in furtherance of, the occupation.

[T]he occupation constitutes an institutionalized regime pursuing racial oppression and discrimination against Palestinians, that the regime is intended to secure the domination of Jewish Israelis over Palestinians, and that the regime is carried out and maintained through innumerable inhumane acts. The inescapable conclusion is that the occupation itself constitutes an apartheid regime prohibited by international law.”⁶⁴⁰

(j) **Saudi Arabia:**

“[T]he policies and practices pursued by Israel in the Occupied Palestinian Territory have resulted in the imposition of a system of segregation and racial discrimination tantamount to *apartheid* contrary to Israel’s obligations under the Convention on the Elimination of All Forms of Racial Discrimination (“CERD”). As documented by several U.N. human rights mandate holders, the reality of this *apartheid* system can no longer be seriously doubted. In broad terms, it is achieved by Israel seizing land and resources in the Occupied Palestinian Territory for the exclusive use and enjoyment of Israeli settlements and settlers while limiting, through the restrictive and discriminatory application of laws and regulations, as well as

⁶³⁹ Written Statement of Pakistan, paras. 57 and 63.

⁶⁴⁰ Written Statement of Qatar, Vol. I, paras. 4.49 and 4.102-4.104.

military control, the right of Palestinians to exercise fundamental freedoms and social and economic rights in those same areas and to live normal lives.

.....

That these practices amount to a systematic government-inspired and supported system of racial discrimination tantamount to apartheid throughout the Occupied Palestinian Territory cannot be hidden or seriously denied, and the Court should therefore recognize and condemn those practices as such. Moreover, the reality of the apartheid like system Israel has implemented in the Occupied Palestinian Territory demonstrates in the clearest manner possible the need for the U.N., and the international community at large, to unambiguously declare the occupation illegal in its entirety and require that it be put to an end.”⁶⁴¹

(k) Yemen:

“The existence of a systematic regime of racial discrimination amounting to apartheid is clear on both sides of the Green Line. Widespread and systematic discrimination against Palestinian Arabs is institutionalized and systematic, established with the intent to maintain the domination of one racial group (Israeli Jews) over another (Palestinian Arabs), and includes the deprivation of the most basic rights for Palestinians, including to return to their homes and property.”⁶⁴²

4.46. Algeria⁶⁴³, Bangladesh⁶⁴⁴, Cuba⁶⁴⁵, Djibouti⁶⁴⁶, Jordan⁶⁴⁷, Lebanon⁶⁴⁸, the Organisation of Islamic Cooperation⁶⁴⁹, and⁶⁵⁰ all likewise conclude that Israel is committing apartheid against Palestinians in the OPT.

⁶⁴¹ Written Statement of Saudi Arabia, paras. 29 and 73.

⁶⁴² Written Statement of Yemen, para. 38; see also paras. 35 and 40(2).

⁶⁴³ Written Statement of Algeria, pp. 47 and 50.

⁶⁴⁴ Written Statement of Bangladesh, para. 31(ii).

⁶⁴⁵ Written Statement of Cuba, pp. 15, 21 and 29.

⁶⁴⁶ Written Statement of Djibouti, paras. 20-29.

⁶⁴⁷ Written Statement of Jordan, Vol. I, para. 5.13.

⁶⁴⁸ Written Statement of Lebanon, paras. 19, 49-50, 51, 57 and 62.

⁶⁴⁹ Written Statement of the Organisation of Islamic Cooperation, Vol. I, para. 334.

⁶⁵⁰ Written Statement of Syria, paras. 20, 26-29.

4.47. The conclusion that Israel is engaged in apartheid is further supported by an ever-expanding body of reports by independent NGOs and legal experts. The Legal Study stressed that:

“Israel applies discriminatory apartheid policies and practices against Palestinians on both sides of the Green Line. Although the core framework institutionalizing the apartheid regime was established in the years after 1948, the segregationist laws, policies and practices continued in the form of military orders in occupied Palestine beginning in 1967.

.....

[M]any of the internationally wrongful acts, such as the imposition of an apartheid regime and the breach of self-determination as a “sacred trust” of the Palestinian people, are continuing acts since 1948.”⁶⁵¹

4.48. That independent report further noted that:

“That the occupation of the Palestinian territory is taking place in the context of an institutionalized regime of racial discrimination and domination of one racial group over another, amounting to apartheid, has been catalogued by the United Nations Committee on the Elimination of Racial Discrimination; United Nations Special Rapporteurs; and prominent Palestinian, Israeli, and international civil society organizations; and recognized as such by a growing cohort of Third States, including, among others, Namibia, South Africa and the 57 Member States of the Organisation of Islamic Cooperation.”⁶⁵²

4.49. Moreover, as Palestine noted in its Written Statement, this assessment of the situation in the OPT is explicitly shared by various senior Israeli officials.⁶⁵³ Since those Written Statements were filed, more senior Israeli officials have publicly characterised Israel’s conduct as apartheid. In September 2023, for example, the former head of Israel’s Mossad intelligence agency, Tamir Pardo, stated publicly that:

⁶⁵¹ Legal Study, 20 September 2023, A/78/378-S/2023/694, pp. 62 and 69 (<https://undocs.org/A/78/378>).

⁶⁵² *Ibid.*, p. 64.

⁶⁵³ Written Statement of the State of Palestine, paras. 4.233-4.236.

“There is an apartheid state here ... In a territory where two people are judged under two legal systems, that is an apartheid state.”⁶⁵⁴

4.50. For the reasons set out above and in Palestine’s Written Statement, the evidence firmly establishes that Israel has violated, and is continuing to violate, the *jus cogens* prohibition of apartheid.

IV. Legal Consequences of Israel’s Violations of Human Rights and International Humanitarian Law That Constitute Grave Breaches, Persecution, Racial Discrimination and Apartheid

4.51. As explained above, in their Written Statements many States and all three intervening international organisations have stressed the special nature and quality of the norms violated by Israel, which are *jus cogens* and *erga omnes* obligations from which no derogation is permitted. It is therefore unsurprising that a majority of the Written Statements deal at length with the legal consequences of Israel’s violations of those fundamental international legal rules. The Written Statements provide strong and unqualified support for Palestine’s position regarding the legal consequences of those violations for Israel (A), for States other than Israel (B) and for the United Nations (C).

A. LEGAL CONSEQUENCES FOR ISRAEL

4.52. In its first Written Statement, Palestine explained that Israel is required to cease its violations of international law and to provide assurances and guarantees of non-repetition (1) as well as to make reparation for the harm caused to Palestine, the Palestinian people and individual Palestinians (2).⁶⁵⁵ The Written Statements of other States and international organisations provide overwhelming support for this conclusion.

⁶⁵⁴ “A former Mossad chief says Israel is enforcing an apartheid system in the West Bank”, *Associated Press*, 6 September 2023 (emphasis added) (<https://tinyurl.com/2s49r3jj>).

⁶⁵⁵ See Written Statement of the State of Palestine, paras. 7.7-7.97.

1. Israel Must Cease Its Violations of International Humanitarian Law and International Human Rights Law and Provide Assurances and Guarantees of Non-Repetition

(a) The Obligation to Cease Wrongful Conduct

4.53. The vast number of violations of international humanitarian law and international human rights law committed by Israel and their prolonged nature across decades makes it impossible to list exhaustively all of the wrongful acts which it has a duty to cease. As **South Africa** points out, in addition to the sheer scale of those wrongful acts, what makes Israel's violations of international law all the more flagrant – and its obligation to cease them all the more indispensable – is that:

“Where a State fails to observe its obligations in an international treaty to which it has bound itself, it has breached international law. This derives from the general principle of law known as *pacta sunt servanda* which requires that a state must comply with its obligations contained in a treaty once it has ratified or acceded to such a treaty.”⁶⁵⁶

The same is true concerning customary rules – particularly those that have the status of peremptory norms of general international law.⁶⁵⁷

4.54. There is a unanimous consensus that Israel is obligated to end the multitude of ongoing breaches of its obligations under both treaty and customary law. Compliance with that obligation of cessation requires (but is by no means limited to) overhauling the entire Israeli legal system that denies or violates the rights of Palestinians under international human rights and humanitarian law,⁶⁵⁸ including through the imposition of discriminatory laws and regulations⁶⁵⁹ which establish a regime of apartheid.⁶⁶⁰ More specifically, it includes the obligation to repeal all Israeli laws, policies and administrative measures which restrict the

⁶⁵⁶ Written Statement of South Africa, para. 144.

⁶⁵⁷ See, e.g., Written Statements of the Maldives, para. 48; of Brazil, para. 49; of Qatar, Vol. I, para. 5.6 and of Egypt, para. 301.

⁶⁵⁸ Written Statements of Lebanon, para. 57; of Egypt, para. 282; of Pakistan, Final Submissions, para. 114, 6) (c); of Saudi Arabia, para. 78, a.; of France, paras. 82 and 85; of Belize, para. 79; and of Egypt, para. 282.

⁶⁵⁹ Written Statements of Egypt, para. 282; of Lebanon, para. 57; of the African Union, para. 199. g. and h.; of Belize, para. 79; of Egypt, para. 282; of Bolivia, pp. 10-11; and of Namibia, p. 34, para. a.

⁶⁶⁰ Written Statements of Namibia, p. 34, para. b.; of Lebanon, para. 57; and of Belize, para. 79.

freedom of movement of Palestinians and which prevent them from returning to their lands and homes or those of their ancestors⁶⁶¹ or force them to leave their lands.⁶⁶²

(b) *Assurances and Guarantees of Non-Repetition*

4.55. In addition to the cessation of internationally wrongful acts, many States and international organisations have emphasised the need for Israel to provide specific assurances and guarantees that the violations summarised above will not be repeated. As a number of the Written Statements explain, the need for such assurances is underscored by the particularly egregious, longstanding and systematic nature of those violations. As noted in Chapter 2, for example, the League of Arab States identifies (amongst other things) the seriousness, duration and systematic and repeated nature of the breaches and their continual worsening over decades as factors which underscore the high risk of repetition and the concomitant need for assurances and guarantees of non-repetition⁶⁶³. In addition, the League of Arab States and Qatar explain that the need for Israel to provide assurances that it will not repeat those violations is reinforced by the *jus cogens* nature of the norms which have been violated.⁶⁶⁴

4.56. As to the appropriate form of assurances and guarantees of non-repetition, the **African Union** explains that such assurances and guarantees:

“may take many forms, such as an expression of a legal or political commitment to the two-state solution, or the recognition of the State of Palestine, or the renunciation of any claims to title of a legal or historical nature to the Palestinian territories in the West Bank and East Jerusalem – Israel would reassure the Palestinian people, its neighbours in the region, and the international community that it is committed to upholding its obligations under international law. This would ensure that any peace agreement that may be reached in the future is final, durable, and sustainable, which would unlock limitless opportunities of peace and prosperity for all the peoples of the region.”⁶⁶⁵

⁶⁶¹ Written Statement of Belize, para. 79; Written Statement of Lebanon, p. 17, para. 57.

⁶⁶² Written Statement of Pakistan, Final Submissions, para. 114, 6), (b) and (d); Written Statement of Belize, para. 79.

⁶⁶³ See also Written Statement of the African Union, para. 209.

⁶⁶⁴ Written Statements of the League of Arab States, para. 142(1); and of Qatar, Vol. I, para. 5.16.

⁶⁶⁵ Written Statement of the African Union, para. 209.

4.57. To the same effect, **Brazil** observed:

“... given the circumstances of the case, the responsible State should offer appropriate assurances and guarantees of non-repetition. These assurances could take the form, *inter alia*, of official declarations, international commitments, and legislative and administrative measures.”⁶⁶⁶

2. Reparation

4.58. In its Written Statement⁶⁶⁷, Palestine explained that in addition to its obligation to cease its violations of the rights of Palestinians and to grant assurances and guarantees of non-repetition, Israel is legally required (in the words of the Court’s predecessor in the famous *Factory at Chorzów* case) to “wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed”.⁶⁶⁸ Palestine explained that given the nature and extent of the harm caused by Israel to the Palestinian people, appropriate reparation for the harm caused in this case should combine restitution (**i.**), compensation (**ii.**) and satisfaction (**iii.**). Once again, the Written Statements filed by other States and international organisations provide overwhelming support for this conclusion.⁶⁶⁹

(a) Restitution

4.59. All the States that have highlighted Israel’s violations of international humanitarian law and international human rights law agree that Israel has an obligation to re-establish the pre-existing situation in order to make good the damage caused to the Palestinians and to respect their rights.

4.60. The restitutionary measures required are as diverse and numerous as the violations committed by Israel. In this regard, **Pakistan** explains (without purporting to provide an exhaustive list) that:

“Restitution may take the form of material restoration or return of territory, persons or property, or the reversal of some juridical act, or some combination of them. Examples of material restitution include the release

⁶⁶⁶ Written Statement of Brazil, para. 51.

⁶⁶⁷ See Written Statement of the State of Palestine, paras. 7.32-7.84.

⁶⁶⁸ *Factory at Chorzów, Merits, Judgment no. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47, quoted, e.g., in the Written Statements of Egypt, para. 308; of Pakistan, para. 91; and of Saudi Arabia, para. 78, d.

⁶⁶⁹ See, e.g., Written Statements of Brazil, para. 53; of Egypt, para. 309; and of Malaysia, para. 67, b.

of detained individuals, the handing over to a State of an individual arrested in its territory, and the restitution of ships or other types of property, including documents, works of art, share certificates, etc.”⁶⁷⁰

4.61. The **League of Arab States** has similarly provided a number of examples of the types of restitutionary acts which may be required in order re-establish, as far as possible, the *status quo ante*:

“Examples of restitution acts would be:

-
- (2) The annulment or rescission of legislative acts, decrees, or administrative acts or orders in connection with the occupation, subject to the application of a human rights-based consideration akin to the ‘Namibia exception’ concerning invalidity and non-recognition. In the *Wall* Advisory Opinion, the present Court specified that

[a]ll legislative and regulatory acts adopted with a view to [the] construction [of the wall], and to the establishment of its associated regime, must forthwith be repealed or rendered ineffective, except in so far as such acts, by providing for compensation or other forms of reparation for the Palestinian population, may continue to be relevant for compliance by Israel with [its] obligations.

-
- (4) Releasing all Palestinian prisoners and detainees and non-Palestinian nationals imprisoned for Palestine-related reasons;
- (5) Returning seized land and property”.⁶⁷¹

4.62. On the specific question of the destruction of Palestinian property, a number of States and international organisations have quoted or paraphrased the Court in the *Wall* Opinion and correctly explained that:

⁶⁷⁰ Written Statement of Pakistan, para. 91 (footnote omitted). See also Written Statement of Saudi Arabia, para. 78, d. or Written Statement of Namibia, para. 132 (a).

⁶⁷¹ Written Statement of the League of Arab States, para. 149 (footnotes omitted).

“Israel is under the obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person ... in the Occupied Palestinian Territory”⁶⁷²

4.63. The Legal Study notes that:

“[T]he International Court of Justice held that South Africa had an obligation to ‘withdraw its administration from the Territory of Namibia’, and similarly, encouraged in *Chagos* that the British administration of the Chagos Archipelago end ‘as rapidly as possible’. For Palestine, appropriate restitution may thus take the form of the release of Palestinian political prisoners; the returning of properties, including cultural property seized by the occupying authorities; the dismantlement of unlawful Israeli settlements in the occupied West Bank and East Jerusalem; the lifting of the blockade of the Gaza Strip; the dismantling of the institutionalized regime of discriminatory apartheid laws, policies and practices; and the dismantling of the occupying administration.”⁶⁷³

It underscores:

“Notably, the Palestinian people include those in the Occupied Palestinian Territory, Palestinian citizens of Israel, and Palestinian refugees and exiles in the diaspora denied their right of return. Such territorial and temporal considerations should be at the fore when considering Israel’s obligations of cessation and non-repetition, and the forms of reparations, including restitution, compensation and satisfaction.”⁶⁷⁴

(b) *Compensation*

4.64. If and to the extent that it is impossible for certain damage to be made good through restitution (or if the victims of the damage elect to receive compensation rather than restitution⁶⁷⁵) then Israel is obliged to provide compensation for that damage. As **Egypt** explains, this entails an obligation to “provide adequate compensation, not only to Palestine, but also to all natural and

⁶⁷² See Written Statement of Lebanon, para. 56, quoting from the French version of the *Wall* Opinion, p. 198, para. 153, which reads: “Israël est en conséquence tenu de restituer les terres, les vergers, les oliveraies et les autres biens immobiliers saisis à toute personne physique ou morale, [dans le territoire palestinien occupé].” See also Written Statement of France, para. 88.

⁶⁷³ Legal Study, 20 September 2023, A/78/378-S/2023/694, p. 11 (footnote omitted) (<https://undocs.org/A/78/378>).

⁶⁷⁴ *Ibid.*, p. 69.

⁶⁷⁵ See Article 43, para. 2 of the Articles on State Responsibility.

legal persons having suffered from material and non-material damage, as a result of its wrongful conduct.”⁶⁷⁶ As **Qatar** explains, the damage which Israel is required to compensate therefore “includes but is by no means limited to: killings; detentions; physical injuries; psychological and mental health injuries; destruction of and damage to homes and other property that cannot be restored; and financially assessable damage to businesses.”⁶⁷⁷ Furthermore, as **Belize** explains, compensation must also “cover all financially *assessable damage, including loss of profits* [and] must include *interest* as necessary to ensure full reparation.”⁶⁷⁸

4.65. As Belize and Namibia observe, Palestinians have a right to compensation for the ongoing suffering caused by Israel’s regime of apartheid.⁶⁷⁹ This situation is not unprecedented. As **Qatar** correctly notes:

“The provision of compensation to individual victims of discriminatory persecution is rooted in State practice. ... the Truth and Reconciliation Commission of South Africa in 1998 recommended the payment of ZAR 21,700 per year for six years to every victim of apartheid in the country. And while the Government did not fully implement this recommendation, it did approve the one-time payment of ZAR 30,000 in compensation to each victim. To give an even more recent example, in 2013, the United Kingdom agreed to pay GBP 19.9 million in damages for its discriminatory persecution of individual Kenyans involved in the Mau Mau rebellion of the 1950s.”⁶⁸⁰

4.66. Moreover, as **South Africa** rightly observes, in determining the appropriate amount of compensation the illegality of the occupation may be relevant: “the illegality of the occupation *per se* (as opposed to an occupation that is legal in terms of the *jus in bello*) is a factor which may increase the financial compensation to legal and natural persons affected thereby.”⁶⁸¹ **Brazil** has likewise observed:

⁶⁷⁶ Written Statement of Egypt, para. 314. See also Written Statements of Qatar, Vol. I, paras. 5.24; and of Saudi Arabia, para. 78.d).

⁶⁷⁷ Written Statement of Qatar, Vol. I, para. 5.24. See also Written Statements of Malaysia, para. 67, b; of Belize, para. 80.a) and c); and of Namibia, para. 132.b).

⁶⁷⁸ Written Statement of Belize, para. 80 (emphasis added and footnotes omitted). See also Written Statement of Namibia, para. 132.a) and Articles 36, para. 2, and 38 of the Articles on State Responsibility.

⁶⁷⁹ See, e.g., Written Statement of Namibia, para. 132(b); Written Statement of Qatar, Vol. I, paras. 5.24.

⁶⁸⁰ Written Statement of Qatar, Vol. I, para. 5.25 (footnotes omitted).

⁶⁸¹ Written Statement of South Africa, para. 146.

“It is also important to take into consideration the rights of the Palestinian people over their natural resources, including land, water and energy resources when financially assessing compensation.”⁶⁸²

(c) *Satisfaction*

4.67. In addition to restitution and compensation, there is broad agreement that Israel is also required to provide satisfaction.⁶⁸³ In its Written Statement, Palestine stressed the importance in this regard of prosecuting those responsible for Israel’s war crimes and crimes against humanity, including the crimes of apartheid – some of the most serious crimes under international law. Several other States have also identified the importance of securing criminal accountability as an aspect of Israel’s obligation to provide satisfaction for its internationally wrongful acts.⁶⁸⁴ **France**, for example, explains:

“Au titre de la satisfaction, il conviendrait, s’agissant de violations graves du droit international humanitaire et du droit international des droits de l’Homme commises dans le territoire palestinien occupé, qu’Israël procède à la recherche et la divulgation des faits et mène des enquêtes pour identifier et poursuivre les personnes responsables.”⁶⁸⁵

4.68. In respect of apartheid and the related gross human rights abuses perpetrated by Israel against the Palestinian people, there are historic precedents which provide helpful examples of the types of actions which could form part of the discharge of Israel’s obligation of satisfaction. As **Qatar** explains:

“In addition, relying on the South Africa precedent as well as other precedents in various Latin American countries like Uruguay, Peru, Chile, and Ecuador, satisfaction should further be given by requiring Israel to cooperate in the establishment and operation of a truth and reconciliation commission. The Truth and Reconciliation Commission of South Africa, for one, was created to investigate gross human rights violations that were perpetrated during the period of the apartheid regime from 1960 to 1994,

⁶⁸² Written Statement of Brazil, para. 56.

⁶⁸³ See above fn. 674. See also Written Statements of Belize, para. 81 ; and of Qatar, para. 5.31.

⁶⁸⁴ Written Statement of the State of Palestine, paras. 7.76-7.84.

⁶⁸⁵ Written Statement of France, para. 89 (unofficial translation: “As a matter of satisfaction, with regard to grave breaches of international humanitarian law and international human rights law committed in the Occupied Palestinian Territory, it would be appropriate for Israel to undertake fact-finding missions and carry out investigations to identify and prosecute those responsible.”). See also Written Statement of Qatar, Vol. I, para. 5.33.

including abductions, killings and torture. Its mandate covered violations by both the State and the liberation movements and it held special hearings focused on specific sectors, institutions, and individuals. As mentioned above, the Truth and Reconciliation Commission at the end of its mandate made detailed recommendations for a reparations programme that included financial, symbolic, and community reparations. Qatar considers that a similar approach in Palestine would contribute materially to advancing international justice.”⁶⁸⁶

4.69. As to the means by which Israel should be enjoined to provide satisfaction, Qatar correctly explains that: “While satisfaction usually takes the form of a binding declaration of breach by the Court in contentious proceedings, the advisory character of these proceedings prevents the Court’s *dispositif* from granting this particular remedy. Therefore, the Court should clearly state that Israel is under an obligation to acknowledge its violations and to apologize publicly for them.”⁶⁸⁷ Accordingly, “the Court should, in the *dispositif*, require Israel to undertake all these various forms of satisfaction.”⁶⁸⁸

B. LEGAL CONSEQUENCES FOR ALL OTHER STATES

4.70. In its Written Statement⁶⁸⁹, Palestine explained that since the obligations violated by Israel are obligations of *erga omnes* character, in accordance with Article 41 of the Articles on State Responsibility⁶⁹⁰ it follows that other States are under an obligation not to recognise the situation resulting from these violations (1), not to render aid or assistance in the commission of these violations (2) and to cooperate with a view to putting an end to these violations (3). Once again, the Written Statements of other States and international organisations confirm the correctness of these conclusions⁶⁹¹.

1. The Obligation of Non-Recognition

4.71. The first obligation for States resulting from Israel’s violations of international humanitarian law and international human rights law is to refrain from

⁶⁸⁶ Written Statement of Qatar, Vol. I, para. 5.34 (footnotes omitted).

⁶⁸⁷ *Ibid.*, para. 5.32.

⁶⁸⁸ *Ibid.*, para. 5.35. See also Written Statement of Egypt, para. 317.

⁶⁸⁹ See Written Statement of the State of Palestine, paras. 7.109-7.123, 7.127-7.161.

⁶⁹⁰ See above, paras. 2.53-2.106 and 3.27-3.62.

⁶⁹¹ See, e.g., Written Statements of Belize, para. 83; of Lebanon, paras. 60-61; of Maldives, para. 52; of Belize, para. 86; and of Indonesia, Conclusion and Submission, para. 68.

recognising the resulting situation. As explained above, this includes the obligation not to recognise the legality of the occupation and annexation and its implications for Palestinian rights⁶⁹² as well as not to contribute to the harm caused to Palestinians by the denial of their right to self-determination⁶⁹³. As Belize, Egypt and Indonesia note, it also includes an obligation not to recognise, and to denounce, the discriminatory practices and apartheid regime established by Israel⁶⁹⁴.

2. The Obligation Not to Contribute to the Israeli Policy of Violating the Rights of the Palestinian People

4.72. As a number of States emphasize, the obligation on States not to recognise the situation resulting from Israel's violations of international humanitarian law and international human rights law is accompanied by an obligation not to aid or assist Israel in carrying out its internationally wrongful acts.⁶⁹⁵

4.73. This obligation under general international law is mentioned in Article 41 of the Articles on State Responsibility⁶⁹⁶. The obligation is also reflected and enshrined in several instruments to which Israel and a great number of States are Parties, in particular the main conventions on humanitarian law, including The Hague and the Geneva Conventions. As **Switzerland**, which is the depositary of the latter, succinctly explains:

“Toutes les Hautes parties contractantes aux Conventions de Genève ont l'obligation de respecter ... le droit international humanitaire. Cette obligation comprend une obligation négative ... Les États tiers sont donc tenus de ne pas encourager, aider ou assister les violations du droit international humanitaire commises dans le Territoire palestinien occupé.”⁶⁹⁷

⁶⁹² See above, paras. 2.89-2.103.

⁶⁹³ See above, paras. 3.45-3.46.

⁶⁹⁴ See Article 41 of the Articles on State Responsibility and, e.g.: Written Statements of Belize, para. 84(c); of Egypt, para. 321, a.; and of Indonesia, para. 68 (f)(1).

⁶⁹⁵ See, e.g., Written Statements of Indonesia, para. 68 (f); of the League of Arab States, paras. 196-197; of Namibia, para. 138; of Djibouti, para. 59; and of France, para. 95.

⁶⁹⁶ See also, e.g.: Written Statement of Indonesia, Conclusion and Submission, para. 68 and Written Statement of the League of Arab States, paras. 196-197.

⁶⁹⁷ Written Statement of Switzerland, para. 52 (unofficial translation: “All High Contracting Parties to the Geneva Conventions have an obligation to respect ... international humanitarian law. This obligation includes a negative obligation ... Third States are therefore under an obligation not to encourage, aid or assist violations of international humanitarian law committed in the Occupied

4.74. In respect of the content of the duty not to contribute to Israel's violations of Palestinians' rights, **Namibia** correctly explains that this obligation:

“a. ... requires all States, to refrain from the provision of weapons, technology, equipment, financial aid, as well as any other material support, to Israel in connection with sustaining the institutionalized regime of discrimination.

b. This obligation also requires all States to regulate the activities of private actors, including business entities, under their jurisdiction whose activities are contributing to sustaining the institutionalized regime of discrimination against the Palestinian people. This obligation, which arises as a matter of general international law and is binding on all States”.⁶⁹⁸

4.75. Moreover, **Djibouti** underscores that:

“Il est *a fortiori* exigé que les États s'abstiennent d'actes qui iraient à l'encontre de l'objectif d'incitation au respect du droit humanitaire, comme le fait de financer, favoriser ou faciliter la politique de colonisation, ou des activités économiques liées à des violations graves du droit humanitaire.”⁶⁹⁹

4.76. Another example of the actions that can and should be taken by States to refrain from aiding or assisting Israel in its violations of international law is provided by **Belize**, whose legislature has “identified actions that States can take to comply with this general duty of non-assistance”. These include:

“[A]dopting targeted sanctions; putting an end to any kind of military, police training or security exchange or trade with Israel; and adopting measures to ensure that businesses operating in their jurisdiction do not engage in or profit from the human rights violations committed by Israel against the Palestinian people.”⁷⁰⁰

4.77. The State of Palestine endorses these examples of actions which States ought to undertake in compliance with their duty not to contribute to Israel's

Palestinian Territory.”). See also Written Statements of China, para. 52; of Djibouti, paras. 57 and 59; and of Indonesia, paras. 64 and 68.

⁶⁹⁸ Written Statement of Namibia, para. 138.

⁶⁹⁹ Written Statement of Djibouti, para. 59 (unofficial translation: “[*a*] *fortiori*, States are required to refrain from acts that would run counter to the objective of encouraging respect for humanitarian law, such as financing, promoting or facilitating the policy of colonisation, or economic activities linked to serious violations of humanitarian law.”).

⁷⁰⁰ Written Statement of Belize, para. 84(d).

ongoing violations of international humanitarian law and international human rights law and of the prohibition on racial discrimination and Apartheid.

3. The Obligation to Cooperate to End Israel's Policy of Disregard for Palestinian Human Rights and Humanitarian Law

4.78. Several States and organisations emphasise that the negative obligation on States to refrain from aiding or assisting Israel in its violations of Palestinian rights is coupled with a positive obligation to cooperate with a view to putting an end to the violations committed by Israel, including its apartheid regime.⁷⁰¹

4.79. As the Written Statements reflect, there are many possible ways of organising this cooperation – both institutionalised and non-institutionalised⁷⁰² – at State level or within the United Nations⁷⁰³. This obligation extends to cooperation with international organisations since international organisations other than the United Nations (e.g. the European Union⁷⁰⁴) are not exempt from this same obligation.⁷⁰⁵

4.80. States therefore have a positive obligation to adopt measures concerning their nationals in the economic sphere. **Belize** correctly explains that:

“[T]his requires the regulation of otherwise lawful conduct of private actors that supports and maintains Israel’s illegal practices. In many cases, the connection between third States and the conduct constituting the violation of or interference with international humanitarian law will be indirect. Similarly, the connection between any particular private actor and such conduct may be indirect, for example by way of forming part of a supply chain for goods or services. A third State may have influence over only one of many aspects of a chain of activities ultimately constituting or supporting such conduct. Exercising jurisdiction to regulate or prohibit even one such aspect may be sufficient to stop or prevent violations of or interferences with international humanitarian law. The failure or refusal to exercise any jurisdiction over such an aspect would qualify as a ‘manifest failure to take

⁷⁰¹ See, e.g., Written Statements of South Africa, paras. 150-151 and 153; of Egypt, para. 321, c.; of Lebanon, para. 63; of Djibouti, para. 54; and of Ireland, para. 52.

⁷⁰² Written Statement of Namibia, para. 137; Written Statement of the League of Arab States, para. 189.

⁷⁰³ Written Statements of Belize, para. 84(a); of Ireland, para. 52; of Namibia, para. 137; and of the League of Arab States, paras. 189-192.

⁷⁰⁴ Written Statement of Ireland, para. 52. See also the Written Statement of Spain, which contains extensive references to the position of the European Union with regard to the Occupied Palestinian Territory.

⁷⁰⁵ See below, paras. 4.88-4.90.

all measures to prevent ... which were within its power and might have contributed to preventing' the international humanitarian law violations. States should therefor[e]: (i) diligently inform themselves of which private actors operating in or subject to their jurisdiction are engaged in conduct connected to Israel's illegal practices; (ii) take appropriate steps to regulate or prohibit conduct that supports or maintains such practices; and (iii) impose appropriate consequences under their domestic law for any breach of such regulations or prohibitions."⁷⁰⁶

Belize adds that:

“Appropriate steps should include the adoption of measures that target specific activities likely to give rise to a serious risk of international humanitarian law violations in the Palestinian territory, such as, for example, prohibiting or rendering unenforceable contracts for the provision of construction work, materials, equipment, finance, insurance/re-insurance or other services relating to the construction of the separation wall, or the construction or maintenance of the illegal settlements, and prohibiting the purchase or conversion of natural resources extracted from the Palestinian territory by or under the purported authority of Israel as well as products produced therefrom. Other measures could involve the expansion of existing or adoption of new mandatory reporting requirements imposed on companies incorporated or operating in a State's jurisdiction to disclose any occupation-connected conduct, and to oblige the taking of steps to ensure that such conduct does not maintain or facilitate Israel's violations of international humanitarian law. ... As so few obligations at the international level are imposed directly on private actors, the onus on States to regulate private actors through legislative and enforcement measures is of central importance to removing incentives and commercial relationships that sustain and further violations of international humanitarian law in the Palestinian territory.”⁷⁰⁷

4.81. The State of Palestine shares these views.

4.82. In view of the *erga omnes* character of the obligations violated by Israel, **Jordan** is right to stress that:

“Any State may request the cessation of these violations, assurances and guarantees of non-repetition and performance of the obligation of full

⁷⁰⁶ Written Statement of Belize, para. 87 (footnotes omitted). See also Written Statement of Djibouti, paras. 58, 64.

⁷⁰⁷ Written Statement of Belize, para. 88 (footnotes omitted). See also Written Statement of Djibouti, *ibid.*

reparation in the interest of Palestine and the Palestinian people. Moreover, all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.”⁷⁰⁸

4.83. This also implies the possibility of adopting coercive measures against Israel to ensure that it complies with international law. In this respect, Jordan rightly points out that States “are ... entitled to take lawful measures to put an end to the violation of and induce compliance with such obligations”⁷⁰⁹.

4.84. Article 54 clarifies that the Articles on State Responsibility do “not prejudice the right of any State [beneficiary of an obligation owed to the international community as a whole] to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached”⁷¹⁰.

4.85. Finally, a number of States confirm that States other than Israel have an obligation to prosecute and bring to justice those responsible for serious crimes under international law including humanitarian law.⁷¹¹ That obligation is reflected in clear and unambiguous terms in Article 146 of the Fourth Geneva Convention.⁷¹² As **Qatar** explains, this obligation to bring to justice those responsible for such grave breaches, which is also contained in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, means that States other than Israel must:

“[E]nsure accountability under international law for international crimes committed in the context of Israel’s occupation. As the OPT Special Rapporteur recommended in her most recent report, all States should ‘[a]ct to ensure a thorough, independent and transparent investigation of all violations of international human rights law and international humanitarian law, including those amounting to potential war crimes, crimes against

⁷⁰⁸ Written Statement of Jordan, para. 4.187.

⁷⁰⁹ *Ibid.*, para. 4.188. See also the Written Statement of Belize, para. 84(d).

⁷¹⁰ See Article 54 of the Articles on State Responsibility.

⁷¹¹ See, e.g., Written Statements of the African Union, paras. 243-246; of Belize, para. 89; of Qatar, Vol. I, para. 5.68; of Namibia, para. 33; and of Pakistan, para. 114, 6), (e).

⁷¹² Fourth Geneva Convention, Article 146. See, e.g., Written Statements of the African Union, paras. 243-246; of Belize, para. 89; and of Qatar, Vol. I, para. 5.68.

humanity and the crime of aggression, committed in the occupied Palestinian territory’.”⁷¹³

4.86. With regard to the Apartheid Convention, **Namibia** specifies that:

“The Apartheid Convention is, in essence, a suppression convention – it requires State Parties to suppress, discourage, and prosecute acts of apartheid. That is, it aims to ensure the criminalization and punishment of the crime of apartheid.”⁷¹⁴

This obligation is of particular importance in the present case, given the seriousness of the crime of apartheid.

4.87. In the same way, the obligation of cooperation implies an obligation for States Parties to the Rome Statute to cooperate with the International Criminal Court. As the **African Union** explains:

“These obligations are also pertinent in view of the investigation currently pending before the International Criminal Court (ICC), regarding the situation in Palestine. The focus of the ICC, under the Rome Statute, is on individual criminal responsibility – not on the obligations of states. Nonetheless, to the extent the ICC finds individual liability, all states parties to the Rome Statute will have an obligation to extradite or prosecute all individuals involved in these crimes. UN reports have suggested that the Israeli settlements may qualify as a war crime under the Rome Statute.”⁷¹⁵

⁷¹³ Written Statement of Qatar, Vol. I, para. 5.67 quoting “UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 78(c).” Qatar further notes at para. 5.70 that: “should a State wish not to prosecute a perpetrator of a ‘grave breach’ of the [Fourth Geneva Convention], it may choose instead to extradite them to another State that is able and willing to prosecute them. By the same token, States should exercise caution in agreeing to extradition requests made by Israel with respect to crimes committed in the OPT, and such requests should generally be refused when they relate to individuals facing criminal charges in Israel for activities related to opposing the occupation. Indeed, Israel has a long history of harassing and mistreating activists who oppose its policies.” See also Written Statement of the African Union, para. 245.

⁷¹⁴ Written Statement of Namibia, para. 33 (footnote omitted). See also Written Statements of Qatar, Vol. I, para. 5.72; and of Belize, para. 89.

⁷¹⁵ Written Statement of the African Union, para. 246. See also Written Statements of Belize, para. 89; and of Qatar, Vol. I, para. 5.78.

C. LEGAL CONSEQUENCES FOR THE UNITED NATIONS

4.88. As several States have correctly pointed out, the obligations incumbent on States other than Israel are also incumbent on the United Nations and other international organisations.⁷¹⁶ In this respect, many States and international organisations have rightly recalled the words already used by the Court in the *Wall* opinion:

“[T]he United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion.”⁷¹⁷

4.89. Some States, notably **South Africa**, have suggested further action that could be taken by the United Nations to put an end to Israel’s violation of humanitarian international law and the human rights of the Palestinian people:

“[O]rgans of the United Nations should also take continuous action to end the racial discrimination and apartheid practiced by Israel in the Occupied Palestinian Territory to ensure that the illegal situation is ended immediately and to ensure that their resolutions are implemented without delay. This may include the establishment of a committee, similar to the Special Committee on Apartheid, with respect to the Occupied Palestinian Territory.”⁷¹⁸

4.90. The organs of the United Nations, including the Court, should, in fact, recognise that Israel’s discriminatory and repressive policies and practices constitute apartheid and should take action to put an end to this practice.

4.91. The obligations bearing upon the United Nations extend to all international organisations. In particular, in order to put an end to Israel’s violations of the rights of the Palestinian people, competent organizations in this field, have a special duty to (amongst other things) call on Israel to take all necessary measures

⁷¹⁶ See, e.g., Written Statement of Indonesia, Conclusion and Submission, para. 68; Written Statement of the League of Arab States, para. 210.

⁷¹⁷ See Written Statement of Namibia, para. 139 quoting “*Wall Advisory Opinion*, para. 160”. See also, e.g., Written Statements of Brazil, para. 66; of Belize, para. 90; of the League of Arab States, para. 212; of Bolivia, p. 14; of Saudi Arabia, para. 88; and of France, para. 96.

⁷¹⁸ Written Statement of South Africa, para.148.

to cease those violations and to adopt the required measures to ensure Israel's compliance.⁷¹⁹

⁷¹⁹ Numerous Written Statements have highlighted the role played in the past and the role to be played in the future by the European Union with a view to informing or putting an end to attacks on Palestinian rights. See in particular: Written Statements of Ireland, para. 52; of Qatar, Vol. I, p. 347, fn. 1330; of the United Arab Emirates, para. 16 and 82. See also the Written Statement of Spain mentioning abundantly European Union action regarding violations of Palestinians Rights.

SUBMISSIONS

As shown in these Comments, all the positions exposed in its Written Observations by the State of Palestine, without any exception, have received overwhelming support from the vast majority of the 56 other States and international organizations which have submitted Written Observations.

Consequently, the State of Palestine can only maintain the Submissions contained in its Written Observations, and, for the reasons set out therein and in the present Comments, it confidently and respectfully reiterates the following Submissions to the Court:

- (1) The Court has jurisdiction to deliver the Advisory Opinion requested by the General Assembly in its resolution 77/47 on 30 December 2022, and there are no grounds for declining to exercise such jurisdiction.
- (2) Israel is responsible for serious breaches of obligations arising under peremptory norms of general international law, including but not limited to the illegality/inadmissibility of the acquisition of territory through the threat or use of force, which is a corollary of the prohibition on aggression; the prohibition against racial discrimination and of apartheid; the right of the Palestinian people to self-determination.
- (3) Israel's occupation, since its onset, has pursued colonization and annexation of the Palestinian territory and has imposed a dual regime favouring its settlers illegally present in the OPT to the detriment of the fundamental rights of the Palestinian people. Israel's occupation has thus, by design, and by its very purpose, breached the three peremptory norms mentioned above. Israel has also breached other peremptory norms, including the prohibition of crimes against humanity, the basic rules of IHL and the prohibition of torture.
- (4) As a consequence of these grave breaches, Israel is bound:
 - (a) To end immediately, unconditionally, and completely its occupation and to withdraw from the OPT. This entails, inter alia, the annulment of all legislation and measures aimed at the annexation of Jerusalem and the rest of the West Bank, the end of the blockade of the Gaza Strip, the withdrawal of all Israeli occupation forces and the dismantlement of its illegal settlements and their associated regime;

- (b) To rescind all of its discriminatory legislation and measures against the Palestinian people on both sides of the Green Line and Palestinian refugees and the diaspora;
 - (c) To respect the inalienable rights of the Palestinian people, first and foremost their right to self-determination and of Palestinian refugees to return to their homes;
 - (d) To provide assurances and guarantees of non-repetition of the abovementioned violations;
 - (e) To make full reparation of the injury caused by, and to wipe out all the consequences of, its policies and practices vis a vis the State of Palestine and the Palestinian people as a whole, as a result of its internationally wrongful acts.
- (5) All States and international organizations, including the United Nations, are bound:
- (a) Not to recognize the illegal situation resulting from Israel's internationally wrongful acts, first and foremost its serious breaches of obligations arising under peremptory norms of international law;
 - (b) Not to contribute to violations of the rights of the Palestinian people; including by not rendering aid or assistance to any of Israel's internationally wrongful acts, and by ensuring that persons and entities under their jurisdiction also do not render aid or assistance in maintaining the illegal situation;
 - (c) To cooperate to protect the rights of the Palestinian people and to end Israel's violations of those rights including by unambiguous and explicit recognition of the illegality of Israel's occupation of the OPT, by enabling the Palestinian people to exercise their right to self-determination and by holding accountable, including by investigating and bringing to justice, those responsible for crimes related to the colonization of the West Bank, including East Jerusalem; the unlawful annexation of Jerusalem and the rest of the West Bank; the blockade and successive assaults on the Gaza Strip, and more generally, the violations of the fundamental rights of the Palestinian people as a whole, including to self-determination, and to be free of racial discrimination and apartheid, as well as the right of Palestinians to life and liberty.

The Hague, 25 October 2023

H.E. Dr. Riad Malki
Minister of Foreign Affairs and Expatriates of
the State of Palestine