



**REQUEST BY THE UNITED NATIONS GENERAL ASSEMBLY FOR
AN ADVISORY OPINION ON
THE LEGAL CONSEQUENCES ARISING FROM
THE POLICIES AND PRACTICES OF ISRAEL IN THE OCCUPIED
PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM**

**WRITTEN COMMENT
SUBMITTED BY THE GOVERNMENT OF THE REPUBLIC OF INDONESIA TO
THE INTERNATIONAL COURT OF JUSTICE**

OCTOBER 2023

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I. Introduction

1. This written comment is submitted pursuant to the Order of the International Court of Justice (the “Court”) of 3 February 2023 upon the request for an advisory opinion made by the United Nations General Assembly (“UNGA”) in its Resolution 77/247 (2023).
2. Indonesia has carefully considered the written statements submitted to the Court by Member States and international organizations. While maintaining all points made in its written submission on 25 July 2023, Indonesia finds it necessary, in view of statements submitted by the Court, to further elaborate upon a number of important issues especially on the jurisdiction of the Court.
3. Indonesia wishes to focus this written comment on specific issues raised by several States. As elaborated in the second section of this written comment, Indonesia is of the view that there is no circumvention to the principle of consent. The question presented before the Court is not a mere bilateral dispute. The opinion sought would not impede the ongoing negotiation, and nothing would bar the Court from rendering the advisory opinion. Indonesia, consequently, reiterates its position that the Court has jurisdiction to give the advisory opinion requested by the UNGA, and there are no grounds for the Court to decline to exercise jurisdiction.
4. On the recent developments in Gaza, Indonesia is of the opinion that to end the recurrence of violence, there is an urgent need to resolve the root causes of the conflict with a view to achieve a two-state solution. Israeli’s illegal occupation of the Occupied Palestinian Territory (“OPT”) and its flagrant violation of international law must come to an end and the right to self-determination of the Palestinian people must be upheld. The recent development further consolidates the need for the Court to present its advisory opinion that would contribute to the advancement and acceleration of a peaceful, just, lasting and comprehensive solution to the question of Palestine.

II. The Court Should Not Decline Rendering the Advisory Opinion

8. The majority of States including Indonesia in their written statements are in agreement that the Court has jurisdiction to render the advisory opinion. In accordance with Article 65 of the Court’s Statute, the UNGA is a competent body to request for an advisory opinion, and the questions that have been posed are legal in nature. Further, the Court has no compelling reasons to decline giving the requested advisory opinion.
9. Indonesia notes that a group of States have argued on the contrary. These States argued that there exist compelling reasons for the Court to exercise its discretion to decline the advisory opinion, as rendering an advisory opinion would affect the judicial propriety of the Court.
10. In the second part of this written comment, Indonesia elaborates its opinion on the Court’s jurisdiction to answer the legitimate legal question submitted to the Court by a competent organ of the UN, and that such compelling reasons to decline the opinion do not exist.
 - a. **There is No Circumvention to the Principle of Consent**
11. Certain States in their written statements argued that Israel has not given its consent to judicial settlement of its dispute with the Palestinian side, and that the two sides have agreed

to resolve its dispute through direct negotiations precisely the subject-matter placed before the Court. These States argued that providing the requested advisory opinion would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent.

12. Indonesia submits that rendering the advisory opinion would not have the effect of circumventing the principle of consent. As the Court has observed in the *Wall*, the lack of consent to the Court's contentious jurisdiction by interested States has no bearing on the Court's jurisdiction to give an advisory opinion.¹
13. This observation was elaborated in the *Interpretation of Peace Treaties* in which the Court stated that "*The consent of States, parties to a dispute, is the basis of the Court's jurisdiction in contentious cases. The situation is different in regard to advisory proceedings even where the Request for an Opinion relates to a legal question actually pending between States. The Court's reply is only of an advisory character: as such, it has no binding force. It follows that no State, whether a Member of the United Nations or not, can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take. The Court's Opinion is given not to the States, but to the organ which is entitled to request it.*"² Therefore, Indonesia considers that, as the Court has maintained, the advisory opinion should not be refused.
14. In *South West Africa*, similar considerations were taken into account in order to determine whether the Court should render the requested advisory opinion. The Court held that as the request had been validly submitted by a competent UN organ consistent with Article 96 paragraph (1) of the UN Charter, there should be no reason to decline to render the requested advisory opinion.³ This situation is best opined by Lauterpacht, who stated that there is "...no need to protect the States from procedures to which they have agreed to beforehand as members of the UN."⁴
15. Several written statements also based their arguments on the *Eastern Carelia* case before the Permanent Court of International Justice ("PCIJ") whereby a lack of consent could prevent the rendering of an advisory opinion. Indonesia wishes to point out that the applicable rules governing advisory proceedings in *Eastern Carelia* differs with that of the present case. In *Eastern Carelia*, a State Party to the proceeding was neither a party to the Statute of the PCIJ

¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 [*Wall*], p. 157, para 47.

² *Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania*, Advisory Opinion, I.C.J. Reports 1950 [*Interpretation of Peace Treaties*], p. 71.

³ *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 [*South West Africa*], para 31.

⁴ H Lauterpacht, *The Development of International Law by the International Court*, (Stevens & Sons Ltd. 1958), p. 355-358; Questions of International Law, "The Chagos request and the role of the consent principle in the ICJ's advisory jurisdiction, or: What to do when opportunity knocks", http://www.qil-qdi.org/the-chagos-request-and-the-role-of-the-consent-principle-in-the-icjs-advisory-jurisdiction-or-what-to-do-when-opportunity-knocks/#_ftn27, accessed on 25 September 2023.

nor a member of the League of Nations,⁵ therefore they are not bound by the Covenant of the League of Nations. Meanwhile in the present proceeding, no issue arises pertaining to the applicability of the ICJ Statute or the UN Charter. As provided in a State's written statement, Israel declared that it "...unreservedly accept[ed] the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a Member of the United Nations..."⁶

16. The Court has made its stance clear on the issue of no circumvention to the principle of consent, as has been elaborated in several cases, including the *Interpretation of Peace Treaties, Western Sahara, Wall and Chagos*. The Court has consistently decided that "*the Court does not consider that to give the opinion requested would have the effect of circumventing the principle of consent by a State to the judicial settlement of its dispute with another State.*"⁷ Due to its advisory and non-binding character, advisory proceedings of the Court do not require the consent of relevant parties. In addition, the Court's opinion is given not to the States, but to the UNGA, as a competent organ of the UN which is entitled to request it.

b. The Question Presented is Not Merely a Bilateral Dispute

17. Several States in their written statements expressed that the Palestine-Israel issue is merely a bilateral dispute. These States argued that should the Court proceed with the advisory opinion, issues concerning judicial propriety would arise. Indonesia is of the view that confining the Palestine-Israel issue to a mere bilateral dispute would only neglect the long-standing international community's engagement to this issue and hinder the work of the UN.
18. Consistent with the practice of this Court, an examination must be conducted in order to determine that the present issue is beyond that of a bilateral dispute.⁸ In this regard, Indonesia submits that (1) the right to self-determination of the Palestinian people is a constant concern of the UN; and (2) the question presented is not confined to the past but relates to the present and future.

(1) The Right to Self-Determination of the Palestinian People is a Constant Concern of the UN

19. The subject matter of the advisory opinion relates to a long-standing issue that has been the concern of the UN. In the *Wall*, the Court affirmed that the Palestine-Israel issue was not a bilateral dispute as it is "...of particularly acute concern to the United Nations..."⁹

⁵ *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975 [*Western Sahara*], p. 23-24, para 30.

⁶ See generally UNGA Res. 273 (III), UN Doc. A/RES/273(III), 11 May 1949; Letter dated 29 November 1948 from Israel's Foreign Minister to the Secretary-General concerning Israel's Application for Admission to the United Nations and Declaration Accepting Obligations under the Charter, UN Doc. S/1093, 29 November 1948.

⁷ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 [*Chagos*], p 118, para 90.

⁸ *South West Africa*, *supra* n. 4, para 38.

⁹ *Wall*, *supra* n. 2, p. 159, para 50.

20. Since its initial involvement in 1947, the UNGA has adopted a multitude of resolutions, convened special emergency sessions of Palestine, and established, including but not limited to the UN Conciliation Commission for Palestine,¹⁰ the UN Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA),¹¹ the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories,¹² and the Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP)¹³ as well as plenty of subsidiary organs under the auspices of the UNGA.
21. In line with the Court's opinion in *Chagos*, "*The General Assembly has not sought the Court's opinion to resolve a ... dispute between two states. Rather, the purpose of the request is for the General Assembly to receive the Court's assistance so that it may be guided in the discharge of its functions ... the Court has emphasized that it may be in the interest of the General Assembly to seek an advisory opinion which it deems of assistance in carrying out its functions...*"¹⁴
22. In essence, the Palestine-Israel issue has constantly been under the UN's radar. This is further justified as the core part of the question requests the Court to determine the "...*legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination...*". The Court is not merely requested to opine on a bilateral dispute involving two States, but the Court is requested to look into the ongoing violations conducted by Israel, through its policies and practices, affecting the right of the Palestinian people to self-determination and its legal consequences, which may potentially have an effect on third States.
23. In addition, the last limb of the statement above concerning the right to self-determination, elevates the present issue beyond that of a mere bilateral dispute. As pronounced by this Court in *East Timor*, the right to self-determination has been considered to have an *erga omnes* character. More recently in *Chagos*, "...*all States have a legal interest in protecting such right.*"¹⁵ The issue therefore does not only concern the interests of Palestine and Israel, but is also of the concern of all States, including the UN.
24. Indonesia also takes notes of the arguments from some States which differentiate between the current advisory opinion request and the *Wall*, as the question in the *Wall* is part of a greater whole and the Court should therefore decline to render the advisory opinion. As opined by Judge Koojijmans, "...*a situation which is of legitimate concern to the organized international community and a bilateral dispute... may exist simultaneously. The existence of the latter cannot deprive organs of the organized community of the competence which has*

¹⁰ UNGA Res. 194(III), 11 December 1948.

¹¹ UNGA Res. 302 (IV), 8 December 1949.

¹² UNGA Res. 2443 (XXIII), 19 December 1968.

¹³ UNGA Res. 3376 (XXX), 10 November 1975.

¹⁴ *Chagos*, *supra* n. 8, p. 117, para 86.

¹⁵ *Ibid.*, p. 139, para 180.

been assigned to them.”¹⁶ Consequently, Indonesia views that such distinction should not be necessary, so long as the issue in question continues to be a concern of the UN.

25. Furthermore, Indonesia notes with caution a written statement of one State framing the question presented before the Court as a question on the right to self-determination of the Palestinian people. This particular State suggests that the current advisory opinion would establish a dangerous precedent whereas the Court “... *can be easily asked to opine on the self-determination via statehood*” of certain peoples. Such statement is misleading and unfounded.
26. The Court is not setting up a dangerous precedent since the right of the Palestinian people to self-determination is already well established under international law. The State of Palestine has been established and recognized internationally as well, including by the UN.
27. Indonesia wishes to underline that the question of self-determination, as reaffirmed through UNGA Resolution 1514 (XV) (1960) and 2625 (XXV) (1970) can only be exercised under strict conditions in the context of decolonization. Among those conditions include whether the territory in question is a non-self-governing territory, or subjected to alien subjugation, domination, and exploitation. These conditions exist to safeguard the territorial integrity of a State, whereby the “...*partial or total disruption of national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations...*”.¹⁷ Therefore, the claims made by a State that the delivery of an advisory opinion in the present case would set a dangerous precedent is unfounded.

(2) The Question Presented is Not Confined to the Past but Relates to the Present and Future

28. In order to determine whether the question presented was located in a broader frame of reference to that of a bilateral dispute, the Court not only assesses the subject matter of the request, but also looks at its temporal aspects. In *Western Sahara*, the Court also took into account the elements of the question presented which “...*are not confined to the past but are also directed to the present and the future...*”.¹⁸ The Court held that such determination would be pertinent to determine the object of the request, which in *Western Sahara*, was to “...*obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions...*”.¹⁹
29. In the present request, the questions presented through the UNGA Resolution 77/247 (2023), are not merely confined to the past, but requests the Court to provide guidance on the present situation concerning “...*legal consequences arising from the ongoing violation by Israel...*” and “...*the legal status of the occupation...*” as well as a determination of the future, namely “...*the legal consequences that arise for all States and the United Nations...*”. A response made by the Court against the question presented in the present advisory opinion would help

¹⁶ *Wall*, *supra* n. 2, Separate Opinion of Judge Koojimans, p. 227, para 27.

¹⁷ See generally UNGA Res. 1514 (XV), 14 December 1960.

¹⁸ *Western Sahara*, *supra* n. 6, p. 26, para 38.

¹⁹ *Ibid.*, p. 26-27, para 39.

the UNGA to continue its work to help achieve the most favourable outcome with regards to the Palestine-Israel issue.

30. Given the fact that the subject matter of the present request is of acute concern to the UN, and taking into account the temporal elements of the question, the question presented to the Court is therefore located in a much broader frame of reference than, and cannot be seen as, a merely bilateral dispute.

c. The Question Presented Would Not Impede the Ongoing Negotiations between Palestine and Israel

31. Several States have argued that the rendering of an advisory opinion could potentially prejudice and preclude the outcome of the negotiations. Furthermore, such a group of States emphasize that resolving the Palestine-Israel issue should be centred around the negotiation frameworks and agreements between Palestine and Israel.
32. Indonesia submits that the present advisory opinion would not impede the ongoing negotiations between Palestine and Israel or run contrary to the agreements between Palestine and Israel as: (1) the advisory opinion seeks to facilitate negotiations; and (2) in any event, negotiations have been rendered futile.

(1) The Advisory Opinion Seeks to Facilitate Negotiations

33. The practice of the Court shows that it has refused to entertain arguments that the advisory opinion would impede any ongoing negotiations between Palestine and Israel. In the *Wall*, the Court decided that “...it is not clear... what influence the Court’s opinion might have on those negotiations...” and therefore the Court cannot “...regard this factor as a compelling reason to decline to exercise its jurisdiction.”²⁰
34. Furthermore, Judge Al-Khasawneh in his Separate Opinion of the *Wall* went even further to point out that “no one should be oblivious that negotiations are a means to an end and cannot in themselves replace that end.” In other words, negotiations are merely a tool to achieve the intended outcome, it is not the end goal of the issue between Palestine and Israel. This is especially true when obligations of an *erga omnes* character are at stake and the requirement of good faith by abstaining from creating *faits accomplis* on the ground are continuously violated by Israel.²¹
35. In *Interpretation of Peace Treaties*, the Court had a submission which argued that the advisory opinion would replace the existing mechanisms provided under the Peace Treaties and become an obstacle to such mechanism.²² The Court held, however, that the purpose of the advisory opinion was to facilitate the mechanism by “...seeking information for the

²⁰ *Wall*, *supra* n. 2, p. 160, para 53.

²¹ *Ibid.*, Separate Opinion of Judge Al-Khasawneh, p. 238-239, para 13.

²² *Interpretation of Peace Treaties*, *supra* n. 3, p. 71.

*General Assembly.*²³ Furthermore, as affirmed in *Chagos*, an advisory opinion is not intended to provide legal solutions to disputes between states.²⁴

36. Presently, the purpose of the advisory opinion as evident from the preamble of the UNGA Resolution 77/247 (2023) is not to definitively solve the issue between Palestine and Israel, but rather, the request underscores “... *the urgent need for efforts to reverse the negative trends on the ground and to restore a political horizon for advancing and accelerating meaningful negotiations aimed at the achievement of a peace agreement...*”²⁵ As such, the present advisory opinion seeks to facilitate and push the ongoing negotiations forward, and not hinder the ongoing negotiations.
37. Therefore, this advisory opinion, whatever the result may be, will not impede the ongoing negotiations, and thus should not be a compelling reason for the Court to decline to render the advisory opinion.

(2) In Any Event, Negotiations Have Been Rendered Futile

38. Several States are of the view that the Palestine-Israel issue should remain to be the subject of negotiation between them to solve the outstanding problems. Bringing the issue to the Court reflects the failure to “... *appreciate the very existence of the Israeli-Palestinian agreements, according to which the two sides have agreed to resolve through direct negotiations...*”.
39. All of the established peace processes, including “...*the relevant resolutions of the United Nations, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Road Map...*”²⁶ are centred around ensuring respect for international law. The ultimate goal of the above peace processes is to achieve an end to the Israeli occupation and realize the self-determination of the Palestinian people, consistent with international law.
40. The existence of ongoing negotiations, if any, should not be the pretext to prevent the request for the advisory proceedings of the Court. This is particularly true when one side has a proven track record of blatant disregard of international law.²⁷
41. From Indonesia’s observation, it seems that both Palestine and Israel have exhausted genuine attempts at negotiation.²⁸ There has been “...*no direct negotiations since the first war on Gaza in 2008...*”.²⁹ Furthermore, with plans of Israel to expand its annexation in the West

²³ *Ibid.*

²⁴ *Chagos*, *supra* n. 8, p. 117, para 86; *South West Africa*, *supra* n. 4, p. 24, para 32.

²⁵ See UNGA Res 77/247, 9 January 2023.

²⁶ UNGA Res. A/RES/69/165, 10 February 2015.

²⁷ United Nations, “Israel continues to disregard ICJ Advisory Opinion on the Wall – High Commissioner for Human Rights – Statement”, <https://www.un.org/unispal/document/auto-insert-204464/>, accessed on 4 October 2023.

²⁸ See generally UNGA Res. 181 (ii), 29 November 1947; UNSC Res. 242, 22 November 1967; UNSC Res. 338, 22 October 1973; UNSC Res 1515, 19 November 2003.

²⁹ The New Arab, “Through grim eyes, Palestinians reflect at 29 years of the Oslo Accords”, newarab.com/news/palestinians-reflect-oslo-accords-29-years, accessed on 11 October 2023.

Bank, President Mahmoud Abbas has declared an end to the agreements signed with Israel and the United States of America,³⁰ while Prime Minister Benjamin Netanyahu has vowed only to cooperate with Palestinians on security matters, nothing more.³¹ In short, the negotiations have been rendered futile.

42. As stipulated in *Application of ICSFT and CERD*, a futile or deadlocked negotiation may release the parties from such obligation to negotiate.³² Under such case, Palestine and Israel should not be forced to undergo futile negotiations and the Court should not be barred from rendering the advisory opinion.

d. The Existence of Complex or Contentious Facts Would Not Bar the Court from Rendering the Advisory Opinion

43. In several written comments, some States argued that the questions “...represent a clear distortion of the history and present reality of the Israeli-Palestinian conflict...”, while other countries argued that the issue at hand concerns contentious and complex factual issues, and therefore may prevent the Court from rendering the present advisory opinion.
44. Indonesia submits that the ICJ has not shied away from rendering an advisory opinion, even where the facts in question are complex and concern contentious factual issues.
45. In addressing questions which concern contentious and complex factual issues, the Court considers whether there are “...sufficient information and evidence to enable it to arrive at a judicial conclusion...” In *Chagos, Western Sahara, South West Africa, and the Wall*, the Court has consistently upheld that information is deemed sufficient by virtue of the submission of written statements, written comments, as well as information from the oral proceedings.³³ In the present case, the present advisory opinion has received a total of 57 written statements, with potential for more information to be furnished through the continuation of the written comments and oral proceedings.
46. As a result, there is sufficient information and evidence to allow the Court to render an advisory opinion.

³⁰ Wafa, “President Abbas declares end to agreements with Israel, US; turns over responsibility on occupied lands to Israel, <https://english.wafa.ps/page.aspx?id=vWPVtFa117154132029avWPVtF>, accessed on 11 October 2023.

³¹ CNN, “Netanyahu outlines vision for two-state solution – without Palestinian sovereignty”, <https://edition.cnn.com/2023/02/01/middleeast/netanyahu-palestinian-sovereignty-mime-intl/index.html> accessed on 11 October 2023.

³² *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russia Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 602, para 117.

³³ *Chagos*, *supra* n. 8, p. 115, para 74; *Western Sahara*, *supra* n. 6, p. 29, para 47, *South West Africa*, *supra* n. 4, p. 27, para 40-41, *Wall*, *supra* n. 2, p. 161-162, para 57-58.

III. Conclusion

47. For the reasons set out in this written comment, Indonesia respectfully submits that the Court has jurisdiction to render the advisory opinion requested by the UNGA, and there is no compelling reason for the Court to decline the advisory opinion, as:
- a. there is no circumvention to the principle of consent
 - b. the question presented is not merely a bilateral dispute
 - c. the question presented would not impede the ongoing negotiations between Palestine and Israel
 - d. the existence of complex or contentious facts would not bar the Court from rendering the advisory opinion
48. This written comment complements Indonesia's arguments submitted through its written statement filed on 25 July 2023. Indonesia reserves the right to respond to other issues pertaining to international law during the subsequent advisory opinion proceedings.

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