

INTERNATIONAL COURT OF JUSTICE

Legal Consequences arising from the Policies and Practices of Israel in the  
Occupied Palestinian Territory, including East Jerusalem

(Request for an Advisory Opinion)

**WRITTEN COMMENTS OF THE REPUBLIC OF CHILE  
(SECOND ROUND OF WRITTEN STATEMENTS)**

25 October 2023

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1. By Order of 3 February 2023, the Court decided that the United Nations and its Members States, as well as the Observer State of Palestine, are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory Including East Jerusalem*. The Court opened a first round of written statements and fixed 25 July as the time limit for the submission of those written statements. Henceforth, fifty-seven States, included the Republic of Chile, submitted their written statements. In that same Order of 3 February 2023, the Court fixed 25 October 2023 as the time-limit within which States and organizations having presented written statements may submit a second round of written comments focusing on the written statements made by other States or organizations.
2. In this context, in the present written comments Chile submits its views on two issues which, in its opinion, deserve further remarks that may assist the Court in answering the questions posed by the General Assembly. First, Chile would like to comment on the absence of compelling reasons to decline to give the requested advisory opinion. In this connection, Chile would like to put forward its opinion about the interplay between the advisory jurisdiction of the Court and present or future negotiations between the Parties concerned regarding a solution to their disputes. Secondly, Chile would like to refer to the concept of illegal occupation and how international law should respond in situations where international humanitarian law has been proven incapable of protecting the civilian population living in those territories.

A. Jurisdiction and the Absence of Compelling Reasons for the International Court of Justice to decline giving the Advisory Opinion.

3. The situation of the Occupied Palestinian Territory (“OPT”) has been a matter of concern since 1967. It has been on the United Nations agenda for more than 56 years. Israel and the Palestinian authorities have been seeking a negotiated solution to this protracted problem since 1991. Some States have commented on the possible effects of an advisory opinion on the success of those negotiations as a reason to decline giving the advisory opinion.
4. The Republic of Chile shares the view that a definitive solution to the long-standing Israeli-Palestinian conflict should be the result of negotiations between Israel and Palestine. However, this does not and cannot mean that the organs of the United Nations should be impeded from exercising the powers granted to them by the Charter of the United Nations.
5. In particular, the organs of the United Nations, the purpose of which is the maintenance of international peace and security, can take “effective collective measures for the prevention and removal of threats to the peace”<sup>1</sup> and they can also bring about “adjustment or settlement of international disputes or situations which might lead to a breach of the peace”.<sup>2</sup>
6. In addition, the organs of the United Nations have the mandate “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”.<sup>3</sup> The promotion and encouragement of respect of human rights and fundamental freedoms is at the centre of the solution of international problems as is also recognized in the Charter of the United Nations. It is in this context that the request by the General Assembly for an advisory opinion from the International Court of Justice regarding the legal consequences arising from the acts of Israel in the Occupied Palestinian Territory must be understood.

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<sup>1</sup> United Nations Charter, art. 1(1).

<sup>2</sup> Ibid.

<sup>3</sup> United Nations Charter, art. 1(2).

7. The United Nations Charter has envisaged an important role for the International Court of Justice not only as a tribunal for the resolution of international disputes between States but also as a judicial organ that can give advisory opinions at the request of the Security Council or the General Assembly, or other organs of the United Nations duly authorized by the latter, as contemplated in Article 96 of the United Nations Charter.
8. In exercising its advisory jurisdiction, the Court – as a court of law – has a duty to interpret the applicable law in accordance with the principles of independence and impartiality. In this regard, despite having no binding authority, the Court’s advisory opinions are meant to clarify and develop international law and as such contribute to the strengthening of peaceful relations between States.<sup>4</sup>
9. The Court has made clear through its jurisprudence, that “advisory opinions have the purpose of furnishing to the requesting organs the elements of law necessary for them on their action.”<sup>5</sup>
10. The Israel-Palestinian conflict has led to a long process to find a definitive negotiated solution between the Parties concerned, assisted by various other actors that have made efforts to help the Parties to find and implement a solution to a complex situation. However, the complexity of the situation and the need that the two parties involved should find a negotiated solution, is not in itself a compelling reason for the Court to decline to give the requested advisory opinion.
11. It is a truism to say that negotiations never take place in a vacuum. There is always a political and legal context under which State negotiations take place. The identification and interpretation of the norms and principles governing a particular situation between two States should not be considered disruptive for the success of present or future negotiations. Nor can the parties to a negotiation excuse their breaches of international law in an agreement to solve a dispute through this

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<sup>4</sup> International Court of Justice, “Advisory Jurisdiction”, available at <https://icj-cij.org/advisory-jurisdiction>.

<sup>5</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 60. *See also*, *Reservations to the Convention on Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 19; *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. 27, para. 32; and *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 21, para. 72.

mechanism of resolution. To the contrary, clarification of the legal rules applicable to a political situation can help the parties narrow the scope of their negotiations by limiting the acceptable range of arguments and possible outcomes, in particular when *jus cogens* norms are involved.

12. In fact, in exercising its contentious and advisory jurisdiction, the interpretation by the Court of the applicable law to a particular situation has never been considered in and of itself to be an obstacle to negotiations between the Parties. Quite the opposite. The Court has deemed it to be such an exceptional prerogative, justifiable only by “compelling reasons”<sup>6</sup>, that it has never refused to adjudge a dispute or answer an advisory request “merely because it had political implications”.<sup>7</sup>
13. In the *Aegean Sea case*, Turkey suggested that the Court “ought not to proceed with the case while the parties continue to negotiate and that the existence of active negotiations in progress constitutes an impediment to the Court's exercise of jurisdiction”. However, the Court stated that: “the fact that negotiations are being actively pursued during the present proceedings is not, legally, any obstacle to the exercise by the Court of its judicial function.”<sup>8</sup>
14. Moreover, in the *Hostages case* the Court observed that “legal disputes between sovereign States by their very nature are likely to occur in political contexts, and often form only one element in a wider and long-standing political dispute between the States concerned. Yet never has the view been put forward before that, because a legal dispute submitted to the Court is only one aspect of a political dispute, the Court should decline to resolve for the parties the legal questions at issue between them. Nor can any basis for such a view of the Court's functions or jurisdiction be found in the Charter or the Statute of the Court; if the Court were, contrary to its settled jurisprudence, to adopt such a view, it would impose a far-

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<sup>6</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 156; *See also, Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 14; 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. 27, para. 41; and *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 21, para. 23.

<sup>7</sup> *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 392, para. 96.

<sup>8</sup> *Aegean Sea Continental Shelf*, Judgment, I.C.J. Reports 1978, p. 3, para. 29.

reaching and unwarranted restriction upon the role of the Court in the peaceful solution of international disputes.”<sup>9</sup>

15. Referring to the aforementioned *Aegean Sea* dispute, it further added that “the jurisprudence of the Court provides various examples of cases in which negotiations and recourse to judicial settlement by the Court have been pursued *pari passu*.”<sup>10</sup>

16. In this regard, contrary to what some States have argued in the present proceedings, the rendering of an advisory opinion of the Court on the questions presented to it will not hinder the possibility of a negotiated solution between the State of Israel and Palestine as mandated in Security Council Resolution 338 (1973). In fact, any just and durable peace reached through negotiations must be undertaken in compliance with the principles stated in Security Council Resolution 242 (1967). In particular, “(i) [w]ithdrawal of Israel armed forces from territories occupied in the recent conflict [and] (ii) [t]ermination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force”.<sup>11</sup>

17. This means, that no negotiation is exempted or separate from applicable international law, and it would be in the interest of any negotiated outcome to clarify any breach of international law in the process.

18. In this sense, the Court should not “refuse to respond to the General Assembly’s request on the basis of suggestions, advanced by some of those participating in the proceedings, that its opinion might lead to adverse political consequences.”<sup>12</sup>

19. In fact, as was stated in the *Legality of the Threat or Use of Nuclear Weapons* advisory opinion, “no matter what might be its conclusions in any opinion it might give, they would have relevance for the continuing debate on the matter on the

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<sup>9</sup> *United States Diplomatic and Consular Staff in Tehran*, Judgment, I.C.J. Reports 1980, p. 3, para. 37.

<sup>10</sup> *Ibid.*, para. 43.

<sup>11</sup> Security Council Resolution 242 (1967) of 22 November 1967, UN Doc. S/RES/242(1967).

<sup>12</sup> *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403, para. 35

General Assembly and would present an additional element in the negotiations on the matter. Beyond that, the effect of the opinion is a matter of appreciation. The Court has heard contrary positions advanced and there are no evident criteria by which it can prefer one assessment to another.”<sup>13</sup>

20. It is important to note that the fact that the question submitted to the Court in the present proceedings also has “political aspects, as, in the nature of things, is the case with so many questions which arise in international life, does not suffice to deprive it of its character as a ‘legal question’ and to ‘deprive the Court of a competence expressly conferred on it by its Statute’ (*Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 172, para. 14). Whatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task, namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law (*cf. Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter), Advisory Opinion, 1948, 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).”<sup>14</sup>

21. Furthermore, as was recognized by the Court in its advisory opinion on the *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, especially “in situations in which political considerations are prominent 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”.<sup>15</sup> Moreover, in *Nuclear Weapons*, the Court also found “that the political nature of the motives which may be said to have inspired the

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<sup>13</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I. C.J. Reports 1996, p. 226, para. 17.

<sup>14</sup> *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, I.C.J. Reports 1996, p. 66, para. 16. *See also, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403, para. 27.

<sup>15</sup> *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports 1980, p. 73, para. 33.



request and the political implications that the opinion given might have are of no relevance in the establishment of its jurisdiction to give such an opinion.”<sup>16</sup>

22. In the specific situation at hand, in the *Wall Advisory Opinion* the Court has expressly recognized, regarding the effects of the ongoing negotiations between Palestine and Israel, and the “Roadmap” endorsed by the Security Council in Resolution 1515 (2003) that constitutes a negotiating framework for the resolution of the conflict, that the influence the Court’s opinion might have on those negotiations cannot be regarded as a compelling factor to decline to exercise its jurisdiction.<sup>17</sup>

23. In this sense, as was clarified by the Court in the *Western Sahara* advisory opinion, “to what extent or degree its opinion will have an impact on the action of the General Assembly is not for the Court to decide. The function of the Court is to give an opinion based on law, once it has come to the conclusion that the questions put to it are relevant and have a practical and contemporary effect and, consequently, are not devoid of object or purpose.”<sup>18</sup>

24. Lastly, Chile would like to emphasize that the mere fact that the dossier submitted by the Secretary General to the Court in the present proceedings consists of 1805 documents elaborated by different organs of the United Nations, including several independent expert organs and rapporteurs, shows that the United Nations has for decades been involved in the Palestine question, making several findings and declarations precisely on the questions submitted to the Court, including the occupation and the settlements policy, and the humanitarian and human rights situation in the Occupied Palestinian Territory. These findings of a political and legal character have not been deemed as prejudicial to any negotiated solution, but to the contrary, have contributed to delimit the contours of any negotiated solution. In the same sense, the Court is called upon to shed light on the legal questions submitted to it by the General Assembly, regardless of any political issues surrounding these questions.

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<sup>16</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1. C.J. Reports 1996, p. 226, para. 13.

<sup>17</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 53.

<sup>18</sup> *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 12, para. 73.

25. For the foregoing reasons, it is the view of the Republic of Chile that the advisory opinion of the Court can be an important additional element that may assist the Parties, United Nations organs and any other entities and States willing to contribute to the resolution of this longstanding conflict.

B. The Relevance of the Concept of Unlawful Occupation in the Present Case

26. Occupied territory is a concept created under international humanitarian law (“IHL”). In essence, IHL views the occupation of territory as a consequence of armed conflict, and seeks to regulate the treatment of civilians and their property within the occupied territory. In particular, these regulations are contained in the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex of 1907 (Articles 42-56), in the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (Articles 47-78), and in customary international law.

27. Insofar as the purpose of IHL is to limit the effects of armed conflict and ensure a minimum of humanity in the conduct of States by protecting persons who are not or are no longer participating in the hostilities and restricting the means and methods of warfare,<sup>19</sup> this branch of public international law is not concerned with the legal or illegal status of the use of force.

28. From the point of view of IHL therefore, there are no legal or illegal occupations. In this context, “occupation” describes a factual situation in which the occupying power has obligations towards civilians. However, any breach of these obligations by the occupying power are illegal acts under international humanitarian law and, consequently the occupying State incurs in international responsibility. Moreover, some conducts may also violate international human rights law and, in addition to that, may constitute international criminal acts.

29. In its answers to Question (a) of the request for an advisory opinion the Court will have the opportunity to examine each of the violations of the rights of the Palestinian population living in the Occupied Territory, including the violation of their right to self-determination and discriminatory legislation applied to them.

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<sup>19</sup> International Committee of the Red Cross, “What is International Humanitarian Law?”, available at [https://www.icrc.org/en/doc/assets/files/other/what\\_is\\_ihl.pdf](https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf).

Each violation of international law that is found to have been committed in the Occupied Territory will be described as an illegal act and the Court will establish the legal consequences arising from those breaches of international law.

30. However, Question (b) of the Request for an Advisory Opinion submitted by the General Assembly to the International Court of Justice is of a different character. Question (b) reads as follows:

*How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?*

31. The question is concerned with the legal status of the occupation and the legal consequences arising from this status. This is not a question to be answered by international humanitarian law because, as explained before, IHL is not concerned with the status of occupations.
32. Thus, Question (b) is not about specific violations of international law within the occupied territory, but about how the cumulative effect of breaches of international law in the OPT by Israel, as well as the existence of a *de facto* annexation and the discrimination of Palestinians, may transform the occupation in illegal under public international law.
33. With regard to the Israeli-Palestinian conflict, the Security Council has deemed since 1980 that “all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity [...]and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”<sup>20</sup>, and has therefore called upon Israel on several occasions to end the prolonged occupation.<sup>21</sup> Hence, a clear conclusion on the illegality of the status of the occupation would necessarily entail the obligation to cease said occupation.

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<sup>20</sup> Security Council Resolution 465 (1980), para. 5. UN Doc. S/RES/465(1980). *See also*, Security Council Resolution 471 (1980), paras. 2-4. UN Doc. S/RES/471(1980).

<sup>21</sup> *i.e.*, Security Council Resolution 465 (1980), para. 6. UN Doc. S/RES/465(1980); and, Security Council Resolution 471 (1980), para. 6. UN Doc. S/RES/471(1980).

34. Some States are of the opinion that the Court should not enter into this question as this could be tantamount to adjudicating on permanent status issues between Israel and Palestine, issues that should be resolved by direct negotiations between these two States only.
35. In contrast to that view, the Republic of Chile is of the opinion that there are no compelling reasons for the Court to abstain from answering Question (b). On the contrary, Chile considers that the Court's answers to Question (b) are not only necessary but urgent, for the following reasons:
- (i) the perpetuation of an occupation is not irrelevant to international law insofar as the acquisition of territory by force is prohibited;
  - (ii) the cumulative effect of the violation of humanitarian law, human rights law and international criminal law transforms the maintenance of the occupation in an illegal situation;
  - (iii) the advisory opinion of the Court has been requested by the General Assembly in the context of its responsibilities in accordance with the United Nations Charter, therefore the Court has to exercise its judicial powers to assist a political organ of the United Nations in discharging its responsibilities;
  - (iv) the General Assembly has stated in Resolution 77/247 that there is an urgent need to restore a political horizon for advancing and accelerating meaningful negotiations aimed at the achievement of a peace agreement that will bring a complete end to the Israeli occupation that began in 1967 and the resolution of all core final status issues, without exception, leading to a peaceful, just, lasting, and comprehensive solution of the question of Palestine;
  - (v) in the *Wall Advisory Opinion* the Court stated that Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and

international human rights law,<sup>22</sup> the same obligations that are at issue in the present request;

- (vi) the request concerns the legal consequences that arise for Israel, for all other States and for the United Nations from the policies and practices of Israel in the OPT, therefore, the advisory opinion that the Court will render is relevant not only for Israel and Palestine but for the international community, which as a whole has a responsibility to contribute to the solution of a humanitarian crisis. The Palestinian people urgently require that the United Nations and the Members of the United Nations bring an end to a situation that has become intolerable.

36. The advisory jurisdiction vested in the Court by the Charter of the United Nations, implies that the Court has the power to answer legal questions concerning the legality or illegality of international situations and State's behaviour. Thus, in the *Nuclear Weapons Advisory Opinion* the Court was asked to consider the legality or illegality of the use of nuclear weapons in the light of the regulation of the use of force under international law.<sup>23</sup> The Court approached the question by identifying the applicable law and then interpreting it in order to reach its conclusions.<sup>24</sup>

37. Later, in the *Wall Advisory Opinion* the Court applied the same judicial methodology,<sup>25</sup> starting by determining the rules and principles of international law relevant to the questions posed by the General Assembly and then moving to the examination of the conduct of Israel and assessing compliance or violation of the applicable law by the occupying State. In the *Kosovo Advisory Opinion*, again the Court interpreted the applicable law, in particular, general international law and Security Council Resolution 1244 (1999) and the Constitutional Framework created pursuant to that resolution in order to answer whether the declaration of

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<sup>22</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, paras. 122, 137-138.

<sup>23</sup> General Assembly Resolution 49/75 K (15 December 1994), UN Doc. A/RES/49/75.

<sup>24</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 23.

<sup>25</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 69.

independence by the provisional authorities of Kosovo was or not in accordance with international law.<sup>26</sup>

38. Finally, in the *Chagos Advisory Opinion* the Court examined the factual circumstances and then it applied the principle of self-determination, the principle of territorial integrity, and other principles of international law to assess the legality or illegality of the United Kingdom continued administration of the Chagos Archipelago and the consequences thereof.<sup>27</sup>

39. In conclusion, we ask the Court to render the requested advisory opinion and determine the legal consequences that arise from the cumulative effects of the illegal acts committed by Israel in the OPT and the ensuing illegality of Israel's occupation. The final solution to this long-standing problem will come as the result of negotiations between Israel and Palestine, but by answering the two questions posed by the General Assembly, the Court will play its part, as the principal judicial organ of the United Nations, in contributing to the solution of a situation that has already caused too much suffering.

THE HAGUE, 25 October 2023

Jaime Moscoso Valenzuela  
Ambassador of the Republic of Chile  
to the Kingdom of the Netherlands

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<sup>26</sup> *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403, para. 78.

<sup>27</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 95, paras. 92, 161, and 177.