

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

(REQUEST FOR ADVISORY OPINION)

**WRITTEN COMMENTS OF
THE ARAB REPUBLIC OF EGYPT**

25 October 2023

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Chapter I: Introduction

1. The General Assembly of the United Nations (the “UN”) requested the International Court of Justice (“ICJ”), by virtue of General Assembly resolution 77/247 (the “Request”), to render an advisory opinion on the following questions (the “Advisory Opinion”):

“considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court 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 its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?
 - (b) 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?
2. In its Order of 3 February 2023 (the “Order”),¹ the Court fixed 25 July 2023 “as the time limit within which written statements on the questions may be presented”² and “25 October 2023 as the time limit within which States having presented written statements may submit written comments on the written statements made by other States, in accordance with article 66, paragraph 4 of the Statute of the Court”³.
3. Egypt, having submitted its written statement on the questions addressed to the Court on 25 July 2023, hereby submits its written comments on the written statements made by other States and international organisations participating in this procedure, in accordance with the Order.
4. Before addressing the arguments submitted by other States and international organisations participating in these advisory proceedings, Egypt wishes to emphasize the paramount legal value of this Advisory Opinion. Flagrant violations of international humanitarian law and international human rights law are still ongoing in the Occupied Palestinian Territory, including the targeting of innocent civilians, indiscriminate acts of violence, collective punishment, starvation, siege, and individual and mass forcible transfer, deportation, and displacement. The horizon for peace can only be restored if the root causes are addressed, by ending the occupation and establishing an independent, sovereign and viable Palestinian State, along the pre- June 1967 lines, including East Jerusalem. To this end, Israeli policies and practices that perpetuate the occupation must cease, including the annexation, settlements, individual and mass forcible transfers and other measures that alter the demographic composition, character, and status of the Occupied Palestinian Territory, including East Jerusalem. These policies, practices, and measures, and the legal pretexts advanced to justify them, are the subject of this Advisory Opinion.

¹ The Order can be found here: <https://www.icj-cij.org/sites/default/files/case-related/186/186-20230203-ORD-01-00-EN.pdf>

² *Id.*, at para. 2 of the Order.

³ *Id.*, at para. 3 of the Order.

5. As the principal judicial organ of the UN, the Court stated that its answer to a request for an advisory opinion “represents its participation in the activities of the Organization.”⁴ The Court’s advisory opinions “furnish ... to the requesting organs the elements of law necessary for them in their action.”⁵ As put by the Court, “[w]hen the Court states the law in the exercise of its advisory function, it lends its assistance to the General Assembly in the solution of a problem confronting it.”⁶ Thus, by rendering this Advisory Opinion, the Court would be assuming one of its principal functions in providing necessary legal advice to the UN, and in particular the General Assembly, in resolving a conflict that has lingered for over seventy-five years, threatening regional and international peace and security. This is at the core of the Court’s functions under the UN Charter.

Chapter II: Jurisdiction and Competence

6. At the outset, Egypt recalls the consistent position of the Court, in its previous advisory opinions, which confirms that the answer to a request for an advisory opinion “represents [the Court’s] participation in the activities of the Organization [i.e. the United Nations], and, in principle, should not be refused”⁷. While the Court has stated that the “fact that the Court has jurisdiction does not mean, however, that it is obliged to exercise it”,⁸ its consistent jurisprudence is that only “compelling reasons” may lead the Court to decline the request for an advisory opinion.⁹
7. In its written statement, Egypt already discussed why the Court has jurisdiction to render the requested Advisory Opinion. Egypt noted that the request presented two legal questions that are precisely formulated in clear legal terms and raise issues of international law. The General Assembly’s request for the Advisory Opinion satisfies the conditions of Article 65 of the Statute of the Court and Article 96(1) of the UN Charter, both *ratione personae* (the General Assembly being a duly authorised organ) and *ratione materiae* (the Request being for a legal question). Egypt also concluded that there are no compelling reasons for the Court to decline to give the opinion requested by the General Assembly.
8. Egypt’s written comments will, therefore, be confined to addressing the arguments advanced by a few participants in the present proceedings, that requested the Court to exercise its discretion to decline to render the present Advisory Opinion. In the following sections, Egypt will proceed to respond to the main points brought forward in support of such arguments, namely, (1) that the requested Advisory Opinion circumvents the principle of consent and concerns a bilateral dispute, (2) that the factual evidence is insufficient, (3) that answering the question would undermine the Security–Council endorsed peace process, (4) that the object and purpose of the request is inconsistent with the Court’s judicial function; and (5) that the referral is based on assumptions not supported by international law. These will be addressed, in turn, in the following paragraphs.

⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 156, para. 44 [hereinafter the “*Wall Advisory Opinion*”].

⁵ *Id.*, at p. 162, para. 60.

⁶ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p.129, p.137 [hereinafter the “*Chagos Advisory Opinion*”]

⁷ *The Chagos Advisory Opinion, op. cit.*, para. 65, p.113; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71 [hereinafter “*Interpretation of Peace Treaties Advisory Opinion*”]; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I)*, pp. 78-79, para. 29; *The Wall Advisory Opinion, op. cit.*, p. 156, para. 44.

⁸ *Chagos Archipelago Advisory Opinion, op. cit.*, p. 113, para. 63.

⁹ *Id.*, p. 113, para. 65.

I- No compelling reasons for the Court to decline to render the Advisory Opinion

A- The requested Advisory Opinion does not circumvent the principle of consent and does not concern a bilateral dispute

9. A classical argument in this Court's advisory proceedings, consistently raised by States opposing the Court's jurisdiction, is that a bilateral dispute exists on the subject of the request, and that the advisory proceedings therefore circumvent the principle of consent to adjudication. The Court has never accepted this argument in the course of its long jurisprudence.
10. In the current proceedings, a few States have submitted that the Court should decline to render the Advisory Opinion because, *inter alia*, Israel did not consent to the Court's exercise of jurisdiction and did not vote in favor of General Assembly Resolution 77/247, only one party (Palestine) participated in the drafting of the present Request for an Advisory Opinion, and the questions referred to the Court concern "the core of the parties' bilateral dispute" because, *inter alia*, they address the final status issues.¹⁰
11. As established in this Court's jurisprudence, the lack of consent of "interested parties" in advisory proceedings does not prevent the Court from rendering an advisory opinion. The Court affirmed this in its *Wall Advisory Opinion*, stating that "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".¹¹ In this regard the Court explained 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"¹².

12. The Court continued to explain that:

"The Court's Opinion is given *not to the States*, but to the *organ* which is entitled to request it; the reply of the Court, itself an 'organ of the United Nations', represents its participation in the activities of the Organization, and, in principle, should not be refused" (emphasis added).¹³

13. The written statements advancing the argument of Israel's lack of consent, have extensively invoked the *Eastern Carelia Advisory Opinion*, decided by this Court's predecessor. This was the single occasion in which the Permanent Court of International Justice ("PCIJ") declined to exercise its advisory jurisdiction.¹⁴ It should be noted, however, that in this Advisory Opinion, the Court had before it a dispute between a member of the League of Nations (Finland) and a non-member (Russia), brought forward by the League Council. The Court's refusal to exercise jurisdiction was due to "the very particular circumstances, which were that the question directly concerned an already existing dispute, one of the States parties to which was neither a party to the Statute of the

¹⁰ Written Statement of the UK, p.29, para. 61; Written Statement of the US, p. 24, para. 3.19; Written Statement of Canada, p. 4, paras. 15-16, and p.5, para.22; Written Statement of Hungary, p.6, para. 17.

¹¹ *The Wall Advisory Opinion*, *op. cit.*, p.157, para 47.

¹² *Interpretation of Peace Treaties Advisory Opinion*, *op. cit.*, p. 71; *The Wall Advisory Opinion*, *op. cit.*, pp. 157-158, para. 47; *Western Sahara Advisory Opinion*, *I.C.J Reports 1975*, p. 24, para.31, [hereinafter "*The Western Sahara Advisory Opinion*"].

¹³ *Ibid.*

¹⁴ *Status of Eastern Carelia, Advisory Opinion*, 1923, P.C.I.J., Series B, No. 5, [hereinafter "*Eastern Carelia*"].

Permanent Court, nor a Member of the League of Nations, objected to the proceedings, and refused to take part in any way”.¹⁵ The *Eastern Carelia Advisory Opinion*, therefore, must be distinguished from the case at hand.

14. In fact, the Court has previously stated that by becoming a party to the UN Charter and the Statute of the International Court of Justice, a State has already given its consent to the exercise of the Court’s advisory jurisdiction.¹⁶

15. The written statements supporting the view that the Court should decline to answer the present Request emphasise that Israel, and other countries, voted against the General Assembly resolution requesting the Advisory Opinion and that this resolution was initiated by Palestine. These arguments, however, are equally unconvincing. As the Court previously stated in the *Nuclear Weapons Advisory Opinion*:

“Once the Assembly has asked, by adopting a resolution, for an advisory opinion on a legal question, the Court, in determining whether there are any compelling reasons for it to refuse to give such an opinion, will not have regard to the origins or to the political history of the request, or to the distribution of votes in respect of the adopted resolution.”¹⁷

16. Closely tied to the circumvention of consent argument is the claim that the subject matter of the Request concerns a bilateral dispute. The Court has had numerous opportunities to respond to this argument. In the *Wall Advisory Opinion*, the Court stated that it:

“does not consider that the subject-matter of the General Assembly’s request can be regarded as only a bilateral matter between Israel and Palestine. 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 directly of concern to the United Nations”¹⁸.

17. The Court proceeded to explain that this stems from the fact that the UN has “permanent responsibility towards the question of Palestine,” which has “its origin in the Mandate and the Partition Resolution”¹⁹. The same applies to the current Request, bearing in mind that such “permanent responsibility” continues “until the question [of Palestine] is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy.”²⁰

18. The Court further affirmed, in the *Chagos Advisory Opinion*, that when an opinion is requested on a matter of particular concern to the UN, the Court, in giving the opinion requested would neither be circumventing the principle of consent nor “dealing with a bilateral dispute”.²¹

19. As already argued by Egypt in its written statement, the current Request, which requires the Court to respond to the legal elements of the questions subject of the Request²², “are located in a much broader frame of reference than a bilateral dispute”²³. Therefore, the Court, by rendering this Advisory Opinion, would neither be addressing a “contentious”, bilateral matter, nor

¹⁵ *The Wall Advisory Opinion*, *op. cit.*, p. 157, para. 46; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, *I.C.J. Reports 1996*, pp. 235-236, para. 14. [hereinafter “*Nuclear Weapons Advisory Opinion*”].

¹⁶ *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.16, p. 27, para. 40 [hereinafter “*Namibia Advisory Opinion*”]; *Chagos Advisory Opinion*, *op. cit.*, p. 23, para 31.

¹⁷ *Nuclear Weapons, Advisory Opinion*, *op. cit.*, p. 237, para. 16.

¹⁸ *The Wall Advisory Opinion*, *op. cit.*, p. 159, para. 49.

¹⁹ *Id.*, at p. 159, para. 49 and p. 165, paras. 70-71.

²⁰ *Id.*, at p. 159, para. 49; General Assembly Resolution 57/107 of 3 December 2002.

²¹ *The Chagos Advisory Opinion*, *op. cit.*, p.118, para. 88-90.

²² Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, *Advisory Opinion*, *ICJ. Reports 2010*, p. 403, p. 415, para. 27, [hereinafter the “*Kosovo Advisory Opinion*”].

²³ *The Wall Advisory Opinion*, *op. cit.*, p. 159, para. 50; Written Statement of Egypt, p.9 para.44

circumventing the principle of consent. On the contrary, it would be responding to the legal elements of a question addressed to it by the General Assembly, and which the Assembly considers desirable for the purpose of discharging its functions.²⁴

20. In light of the above, Egypt, respectfully, submits that the current Request cannot be viewed as a bilateral matter between Israel and Palestine nor that it circumvents consent to adjudication.

B- The Court is fully capable and competent to deal with the factual aspects of the Advisory Opinion

21. A few States have argued that the Court should refuse to render this Advisory Opinion because, on the one hand, there is a lack of sufficient information and evidence, and on the other hand, the scope of the questions asked by the General Assembly is too broad and does not set out the factual premise.²⁵ It was further contended that if Israel does not participate in the advisory proceedings, the Court “will lack the material explaining the Israeli side of the picture”.²⁶
22. It is, indeed, the case that “to enable a court to pronounce on legal questions, it must also be acquainted with, take into account and, if necessary, make findings as to the relevant factual issues”²⁷. The Court previously concluded that the decisive factor was whether the Court 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”.²⁸
23. When confronted with the claim of insufficient evidence in the *Chagos Advisory Opinion*, the Court noted 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”.²⁹
24. The Court thus concluded that it was “satisfied that there is [...] 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”.³⁰
25. Similarly, in the present advisory opinion, the subject matter of the questions raised before the Court has been amply discussed by different United Nations organs, in particular the UN Security Council and General Assembly. It has been the subject of a considerable number of reports and resolutions. The Court itself is familiar with the Palestinian-Israeli conflict, and its history, which it reviewed in the context of its *Wall Advisory Opinion* in 2004.³¹
26. The United Nations Secretariat has submitted a comprehensive dossier containing more than 1800 documents covering the matter before the Court, which includes numerous UN reports on the matter.³² In fact, the issues raised by the current Request are among the most documented in the United Nations and other authoritative sources, providing the Court with a solid factual and

²⁴*The Kosovo Advisory Opinion*, *op. cit.*, p. 415, para. 27; the *Wall Advisory Opinion*, *op. cit.*, p. 159, para. 50.

²⁵ Written Statement of the UK, p. 30, para. 62; Written Statement of the US, p. 21, para. 3.12.

²⁶ Written Statement of the UK, p. 33 para. 67.1; Written Statement of the US, p. 24, para. 3.19.

²⁷ *Namibia Advisory Opinion*, *op. cit.*, p.16, p. 27, para. 40; *Chagos Advisory Opinion*, *op. cit.*, p. 114, para 72.

²⁸ *Western Sahara Advisory Opinion*, *op. cit.*, pp. 28-29, para 46.

²⁹ *Chagos Advisory Opinion*, *op. cit.*, p. 114, para. 73.

³⁰ *Id.*, at para. 74.

³¹ *The Wall Advisory Opinion*, *op. cit.*, p. 165, para. 69, pp. 165 to 167, paras. 70 to 77.

³² Written Statement of the UK, p. 32, para. 66.1.

evidentiary basis. In addition, 54 States, the League of Arab States, the African Union, and the Organization for Islamic Cooperation have submitted written statements presenting the facts and relevant legal issues.

27. As for Israel's non-participation (on questions of substance), Egypt would like to recall that the same argument was raised in the *Wall Advisory Opinion* and disregarded by the Court as a factor affecting jurisdiction.³³
28. The argument that the Court should decline to exercise jurisdiction because the questions referred to it "do not set out the factual premise" is similarly unpersuasive. According to this argument, the questions cover a vast scope that includes "the lifespan of the entire occupation"³⁴ without specifically identifying the "measures", "policies" or "practices" to be addressed by the Court.
29. It is unclear whether this argument addresses the factual aspects of the case or rather the meaning and scope of the questions presented by the General Assembly (discussed in paragraphs 47- 51 below). Egypt, respectfully, submits that the questions put forward are "exact statements" within the meaning of Article 65 (2) of the Court's Statute and are formulated in clear and precise terms. The "policies" and "practices" referred to in the second question are those "referred to in paragraph 18 (a) above", namely Israel's "prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem", as well as Israel's adoption of related discriminatory legislation and measures. There is a wealth of evidence documenting these "measures", "policies" and "practices", which are addressed at length in the majority of written statements. Egypt submits that the Court is fully capable of assessing this evidence in light of the applicable law, as it has successfully done in many fact-intensive cases in the recent past.
30. In light of the above, Egypt considers that there is sufficient evidence and information and that the Court is fully capable and competent to deal with the factual aspects of the Advisory Opinion

C- The purported impact on reaching a political, negotiated solution to the Palestinian-Israeli conflict does not constitute a compelling reason to decline jurisdiction

31. It has been argued that, if the Court honours the request for this Advisory Opinion, it would "undermine an established political process",³⁵ particularly since the questions put to the Court address the final status issues.
32. Proponents of this argument contend that the Palestinian-Israeli Conflict should be resolved only through negotiations and refer to the following passage from the *Wall Advisory Opinion*:

"the situation can be brought to an end only through implementation in good faith of all relevant Security Council resolutions, in particular 242 (1967) and 338 (1973).... The Court

³³ Even in its contentious jurisdiction the Court has found that the issue of non-participation is distinct from and does not affect jurisdiction. In *Military and Paramilitary Activities in Nicaragua*, it stated in relation to a party not appearing, that it cannot "be permitted to profit from its absence". *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgement, I.C.J. Reports 1986*, p. 25, para. 31. This was further confirmed by other international courts and tribunals e.g. *Arctic Sunrise (Kingdom of the Netherlands v. Russian Federation), Provisional Measures, Order of 22 November 2013, ITLOS Reports 2013*, p. 230 at p. 243, para. 56; the *South China Sea Arbitration, PCA Case No. 2013-19, Award of 12 July 2016*, p.47, para. 122.

³⁴ Written Statement of the UK, p. 32, para. 66; Written Statement of the US, p. 21, para. 3.13, and p. 24, para. 3.19.

³⁵ Written Statement of the UK, p. 35, para. 70; Written Statement of the US, p.19, para. 3.7, and p. 20, para. 3.10, p.22, para. 3.15, p. 22, paras. 3.14 – 3.15, p. 25, para. 3.22, p. 31-32, para. 5.5-5.7; Written Statement of Italy, p. 3, para. 5; Written Statement of Hungary, p.10, para.37; Written Statement of Canada, p.5, paras. 19-20-21.

considers that it has a duty to draw the attention of the General Assembly... to the need for these efforts to be encouraged with a view to achieving as soon as possible, on the basis of international law, a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours, with peace and security for all in the region”.³⁶

33. As already discussed in Egypt’s written statement, the argument that the current Advisory Opinion could impede a political solution should be dismissed. In the *Nuclear Weapons Advisory Opinion*, the Court examined the argument that a reply from the Court could adversely affect disarmament obligations. The Court expressed its awareness that its conclusions would “have relevance for the continuing debate on the matter in the General Assembly and would present an *additional element* on the matter. Beyond that, the effect of the opinion is a matter of appreciation” (emphasis added).³⁷ It then stated in no uncertain terms that “it cannot regard this factor as a compelling reason not to exercise its jurisdiction”.³⁸
34. Similarly, in the *Wall Advisory Opinion*, the Court dealt with the contention that its opinion could complicate and undermine the negotiations envisioned by the Security-Council endorsed Roadmap, and that the Court should therefore exercise its discretion to decline to answer the question. The Court further indicated that, “it is conscious that the Roadmap which was endorsed by the Security Council in resolution 1515 (2003) constitutes a negotiating framework for the resolution of the Israeli-Palestinian Conflict”³⁹ and that “it is not clear, however, what influence the Court’s opinion might have on those negotiations”.⁴⁰ The Court again concluded that it could not regard this as a compelling reason to decline answering the question.⁴¹
35. A few written statements have argued that the Court, in the *Wall Advisory Opinion*, avoided rendering an opinion that would dictate the outcome of the final status talks.⁴² In support of this, they highlight that the Court only examined “other issues to the extent that they might be necessary for its consideration of the question put to it.”⁴³ This, however, misconstrues the Court’s statement which, simply affirmed that it would limit itself to answering the question before it. The Court clearly stated that “the question that the General Assembly has chosen to ask the Court is confined to the legal consequences of the Construction of the wall.”⁴⁴ The Court explained that it would not address other aspects of the Palestinian-Israeli conflict, except to the extent they affected the question put to it.⁴⁵
36. Egypt considers that the Court’s present Advisory Opinion serves as an essential “additional element” for the United Nations General Assembly to continue to carry out its role in relation to the Palestinian-Israeli conflict, especially in the absence of any prospect for a peaceful solution. As stated by the Court in the *Wall Advisory Opinion*:

“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

³⁶ Written Statement of the UK, p. 36, para. 71.3; Written Statement of the US, p. 19, para. 3.7; *The Wall Advisory Opinion, op. cit.*, p. 200-201, para. 162.

³⁷ *Nuclear Weapons Advisory Opinion, op. cit.*, p. 237, para. 16; *The Wall Advisory Opinion, op. cit.*, p. 160, para. 51.

³⁸ *Nuclear Weapons Advisory Opinion, op. cit.*, p. 237, para. 17; *The Wall Advisory Opinion, op. cit.*, p. 160, para. 51.

³⁹ *The Wall Advisory Opinion, op. cit.*, p. 160, para. 53.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² Written Statement of the US, p. 19, para 3.7.

⁴³ Written Statement of the US, p. 19, para 3.7; *The Wall Advisory Opinion, op. cit.*, p. 160, para. 54.

⁴⁴ *The Wall Advisory Opinion, op. cit.*, p. 160, para. 54.

⁴⁵ *Ibid.*

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”.⁴⁶

37. Egypt, respectfully, submits that the Court, as the principal judicial organ of the UN, should not decline to answer the question for its purported impact on the political process. Rather, the Court should render this Advisory Opinion to assist the General Assembly in discharging its functions in relation to this ongoing conflict. This is particularly the case given the complete absence of serious peace efforts and any prospect for a just and comprehensive settlement.

D- The objective of the request is consistent with the Court’s judicial function:

38. It has been argued that the intention of the present request by the General Assembly was “not to seek the Court’s opinion on a matter on which it requires assistance, but instead, to seek the Court’s confirmation of particular legal conclusion relevant to the resolution of the parties’ bilateral dispute”.⁴⁷ In this context, one written statement has implied that the purpose of the present request is to exploit it as a political strategy. This argument rests on the assumption that the object and purpose of the request is not “consistent with the Court’s judicial function and role as the principal judicial organ of the United Nations”.⁴⁸ It is also similar to the classical argument that the question put forward to the Court is not, in reality, a legal question, which has been addressed, and refuted, in Egypt’s written statement.⁴⁹
39. The Court has made it clear that, in determining whether it is confronted with a legal question, it is not concerned with the political nature of the motives which may have inspired the request, or the political implications which its opinion might have.⁵⁰ The purpose and motives inspiring the request are irrelevant to the question of jurisdiction.
40. Egypt, respectfully, submits that an inquiry into the motivation for an organ - duly authorised under Article 96, paragraph 1, of the UN Charter – to request an Advisory Opinion is immaterial, as resolutions adopted by the General Assembly are an effective expression of its legally valid will. As already addressed in Egypt’s written statement, Resolution A/RES/77/247 was validly adopted from the procedural point of view by the constitutionally required majority of members of the United Nations present and voting.⁵¹ It, therefore, cannot be considered but a reflection of the General Assembly’s legally valid will, whose object and purpose is to request the Advisory Opinion of the Court to assist it in carrying out its functions.
41. The Court previously stated that “it is not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs”⁵². It also indicated that a request from “the General Assembly for an advisory opinion to examine a situation by reference to international law concerns a legal question”⁵³.

⁴⁶ *Id.*, at p. 200, para. 161.

⁴⁷ Written Statement of the UK, p.39, para. 78.

⁴⁸ Written Statement of the UK, p. 37, para, 75; Written Statement of the Czech Republic, p. 2, para.2.

⁴⁹ Written Statement of Egypt, p. 6-7, para 26-33.

⁵⁰ *The Kosovo Advisory Opinion, op. cit.*, p. 415, para. 27. *The Wall Advisory Opinion, op. cit.*, p. 155, para. 41, *Nuclear Weapons Advisory Opinion, op. cit.*, p. 234, para.13.

⁵¹ Written Statement of Egypt, p. 5, para 19.

⁵² *Nuclear Weapons Advisory Opinion, op. cit.*, p. 237, para. 16; *Chagos Advisory Opinion, op. cit.*, p. 115, para. 75.

⁵³ *Chagos Advisory Opinion, op. cit.*, p.112 para. 58.

42. In addition, the Court repeatedly stated that “the fact that a question has political aspects does not suffice to deprive it of its character as a legal question”,⁵⁴ or to “deprive the court of a competence expressly conferred on it by its statute”.⁵⁵ The Court further explained that “whatever its political aspects, the Court cannot refuse to respond to the legal elements of a question which invites it to discharge an essentially judicial task, namely, in the present case, an assessment of an act by reference to international law”⁵⁶.
43. Finally, the Court has repeatedly indicated that it cannot determine, or even concern itself with, what steps the General Assembly may wish to take after receiving the Court’s opinion, or what effect that opinion may have in relation to those steps.⁵⁷
44. In light of the foregoing, Egypt is of the view that it is only for the General Assembly to determine the object of its requests for Advisory Opinions from the Court. Such object and purpose is always reflected in the resolution validly adopted by the Assembly, which is duly authorized under Article 96, paragraph 1, of the UN Charter. Both the political motivations and political consequences of the request cannot deprive the Court of exercising its jurisdiction.
45. Declining to answer the question by reference to the “object and purpose” of the present Request would be contrary to the consistent jurisprudence of the Court and would undermine the decisions taken by the General Assembly through the adoption of its resolutions. Egypt, therefore, respectfully submits that the General Assembly, as a duly authorised organ, has validly invited the Court to address a legal question that is clearly within its judicial function.

E- The interpretation of the questions referred by the General Assembly, if necessary, is a matter to be clarified by the Court in the course of rendering its opinion

46. It has been argued that, “to the extent that the second question could be construed as asking the Court to declare that the Israeli occupation has been rendered unlawful or void, the Court should decline that invitation on the basis that such an assessment is not supported by international law”⁵⁸. This is based on the premise that “the legal *status* of the occupation under international humanitarian law results from the fact of occupation alone”.⁵⁹
47. Egypt respectfully submits that, once it has established its jurisdiction and competence to render the Advisory Opinion, it is up to the Court to assess and interpret the questions put forward to it in light of the relevant law. As the questions involve the interpretation of international norms and have been “framed in terms of law and raise problems of international law ... [they are by their] very nature susceptible of a reply based on law”.⁶⁰
48. In the *Kosovo Advisory Opinion*, the Court first determined it had jurisdiction and competence to answer the question put forward to it, then proceeded to interpret the scope and meaning of the question. The Court recalled that, in previous jurisprudence,

“it has departed from the language of the question put to it where the question was not adequately formulated or where the Court determined, on the basis of its examination of the

⁵⁴ *The Kosovo Advisory Opinion, op. cit.*, p. 415, para. 27; *United Nations Administrative Tribunal Advisory Opinion, op. cit.*, p. 172, para. 14.

⁵⁵ *Nuclear Weapons Advisory Opinion.*, p. 234, para. 13; *United Nations Administrative Tribunal Advisory Opinion, op. cit.*, p. 172, para. 14.

⁵⁶ *Ibid.*

⁵⁷ *The Kosovo Advisory Opinion, op. cit.*, p. 421, para. 44.

⁵⁸ Written Statement of the US, p. 29, para 4.6.

⁵⁹ *Id.*, at p. 27, para. 4.2.

⁶⁰ Written Statement of Egypt, p. 6, para 30; *Western Sahara Advisory Opinion, op. cit.*, p. 18, para. 15; *The Wall Advisory Opinion, op. cit.*, p. 153, para. 37.

background to the request, that the request did not reflect the “legal questions really in issue”. Similarly, where the question asked was unclear or vague, the Court has clarified the question before giving its opinion”.⁶¹

49. The Court has previously stated in its *Nuclear Weapons Advisory Opinion* that “to contend that it should not deal with a question couched in abstract terms is a “mere affirmation devoid of any legal justification” and “the Court may give an advisory opinion on any legal question, abstract or otherwise”⁶². On other occasions, it observed that “lack of clarity in the drafting of a question does not deprive the Court of jurisdiction. Rather, such uncertainty will require clarification in interpretation, and such necessary clarifications of interpretation have frequently been given by the Court”.⁶³ It is, therefore, up to the Court to interpret the scope and clarify the meaning of the question put forward to it, after having established its jurisdiction.
50. If the Court is satisfied that the present request is inadequately worded or does not reflect the real legal issues, it may clarify the question or even reformulate it, in exceptional circumstances, to ensure it can give a reply “based on law”.⁶⁴ Having said that, Egypt submits that the present request is sufficiently clear and precise to allow the Court to give such a reply. By asking “[w]hat are the legal consequences” arising from ongoing violations, since 1967, “[h]ow do the policies and practices ... affect the legal status of the occupation, and what are the legal consequences” that arise for States and the United Nations – the General Assembly has put forward to the Court clear “legal questions”, inviting replies based on international law.⁶⁵
51. Egypt respectfully submits that the second question is clear in that it requires the Court to assess the legality of the prolonged occupation, settlement and annexation of Palestinian territory occupied in 1967. It invites an inquiry into whether the occupation is lawful under international law, and does not confine itself to requesting the Court’s pronouncement on whether “occupation law continues to apply based on the fact of occupation”.⁶⁶ To reduce this question to an assessment of “status” as a characterization of the current situation is no more than a play on semantics, intended to deprive the question of any meaning.
52. With respect to the claim that the second question is not supported by international law, one State participating in these proceedings contends that the legal status of a belligerent occupation does not change if the occupation is prolonged or if illegal violations of *jus in bello* are committed by the Occupying Power. However, the proposition that occupation is, merely, a *de facto* situation whose legality cannot be called into question cannot be accepted on either legal or moral grounds.
53. The majority of participating States and international organisations argued in their written statements that the occupation is, indeed, rendered unlawful by Israeli policies and practices outlined in the question. Egypt has already clarified, in its written statement, that the prolonged nature of the Israeli occupation is an ongoing violation of the principle of self-determination, while measures that result in permanent changes to the occupied territory, including annexation and

⁶¹ *Kosovo Advisory Opinion*, p. 423, para. 50; *Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion*, 1928, P.C.I.J., Series B, No. 16; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion*, I.C.J. Reports 1980, p. 89, para. 35; *United Nations Administrative Tribunal, Advisory Opinion, op. cit.*, p. 348, para. 46); *Chagos Advisory Opinion, op. cit.*, p. 129, para. 135.

⁶² *Nuclear Weapons Advisory Opinion, op. cit.*, para. 15, p. 236; *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion*, 1948, ICJ Reports 1947-1948, p. 61; *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion*, ICJ Reports 1954, p. 51 [hereinafter the “*United Nations Administrative Tribunal Advisory Opinion*”]; *Namibia Advisory Opinion, op. cit.*, p. 27, para. 40.

⁶³ *Chagos Advisory Opinion, op. cit.*, p. 112, para 61; *The Wall Advisory Opinion, op. cit.*, p. 153-154, para. 38.

⁶⁴ *Chagos Advisory Opinion, op. cit.*, p. 129, para. 135.

⁶⁵ Written Statement of Egypt, p. 6, para. 30.

⁶⁶ Written Statement of the US, p. 28, para 4.6.

settlements, are contrary to the fundamental principles of the law of belligerent occupation and the prohibition of the acquisition of territory through force. The individual or collective mass forcible transfer and deportation of Palestinians from the occupied territory, whether to the Occupying Power or the territory of any other country, contrary to article 49 of the Fourth Geneva Convention, is also a measure aimed at altering the demographic situation and a grave breach of the Convention.⁶⁷ This applies to all the Palestinian people and in all the territories lying beyond the Green Line, separating Israel from the Occupied Palestinian Territory,⁶⁸ including the Gaza Strip (over which Israel still maintains effective control),⁶⁹ and the West Bank, including East Jerusalem.

54. The above-mentioned violations of self-determination and the inadmissibility of the acquisition of territory through force cannot be justified by reference to the principle of self-defence. Under international law, self-defence is not a *carte blanche*. The Court itself previously found in the *Wall Advisory Opinion* that article 51 of the UN Charter, which recognizes the inherent right of self-defence in the case of armed attack by one State against another State, has no relevance in this case, as the acts invoked by Israel were acts arising out of the occupied Palestinian Territory, which is under Israeli effective control, and were not imputable to another State.⁷⁰
55. The Court has previously acknowledged that “differences of views ... on legal issues have existed in practically every advisory proceeding”.⁷¹ This cannot constitute a compelling reason for the Court to decline to answer the question put forward to it.
56. As the Court mentioned in the *Nuclear Weapons Advisory Opinion*, “[i]n seeking to answer the question put to it by the General Assembly, the Court must decide, after consideration of the great corpus of international law norms available to it, what might be the relevant applicable law.”⁷² All the aforementioned questions are relevant legal issues that the Court would need to address, after establishing its jurisdiction, to provide an effective answer to the questions asked by the General Assembly.

Chapter III: Conclusion

57. In view of the arguments submitted in its written statement, and for the reasons outlined under Sections A, B, C, D and E above, Egypt concludes that there are no compelling reasons for the Court to decline to give the opinion requested by the General Assembly. The Court, indeed, has a duty to render the Advisory Opinion, to assist the General Assembly in discharging its functions and reviving the horizon for peace.
58. Regarding the questions put forward to the General Assembly in its Resolution A/RES/77/247 of 30 December 2022, Egypt, respectfully, refers to the submissions presented in its written statement.
59. By participating in the present proceedings, Egypt aspires towards attaining a just, peaceful and legal end to all the violations that prompted the Request of the General Assembly. Egypt is convinced that the Court will play a decisive role in clarifying and consolidating the applicable international law, thus assisting the General Assembly in contributing to a just, lasting and comprehensive settlement of the Palestinian-Israeli conflict.

⁶⁷ Written Statement of Egypt, p. 38-39, para. 255.

⁶⁸ *Id.*, at p. 12, para. 58.

⁶⁹ *Id.*, at p. 35, para. 240 – 242.

⁷⁰ *The Wall Advisory Opinion, op. cit.*, p. 62, para. 139.

⁷¹ *Ibid.*

⁷² *Nuclear Weapons Advisory Opinion*, I.C.J. Reports 1996, p. 226, para 23.

25 October 2023

Sameh Shoukry

**Minister of Foreign Affairs
The Arab Republic of Egypt**

Submission of the Arab Republic of Egypt’s Written Comments on the following request for advisory opinion – The International Court of Justice:

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