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THE HAGUE

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YEAR 2024

Public sitting

held on Monday 26 February 2024, at 3 p.m., at the Peace Palace,

President Salam presiding,

***on the Legal Consequences arising from the Policies and Practices of Israel
in the Occupied Palestinian Territory, including East Jerusalem
(Request for advisory opinion submitted by the General Assembly of the United Nations)***

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le lundi 26 février 2024, à 15 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

***sur les Conséquences juridiques découlant des politiques et pratiques d'Israël
dans le Territoire palestinien occupé, y compris Jérusalem-Est
(Demande d'avis consultatif soumise par l'Assemblée générale des Nations Unies)***

COMPTE RENDU

Présents : M. Salam, président
M^{me} Sebutinde, vice-présidente
MM. Tomka
Abraham
Yusuf
M^{me} Xue
MM. Bhandari
Iwasawa
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
MM. Aurescu
Tladi, juges
M. Gautier, greffier

The Government of the Kingdom of Spain is represented by:

Mr Santiago Ripol Carulla, Head of the International Legal Office, Ministry of Foreign Affairs of the Kingdom of Spain,

as Head of Delegation;

HE Ms Consuelo Femenía Guardiola, Ambassador of the Kingdom of Spain to the Kingdom of the Netherlands,

Ms Andrea Gavela Llopis, Head State Attorney, Ministry of Foreign Affairs of the Kingdom of Spain,

Mr Emilio Pin Godos, Deputy Head of the International Legal Office, Ministry of Foreign Affairs of the Kingdom of Spain,

Mr Juan Almazán Fuentes, Legal Adviser, Embassy of the Kingdom of Spain in the Kingdom of the Netherlands,

Ms Elisabet Jiménez Perdigones, Assistant, Embassy of the Kingdom of Spain in the Kingdom of the Netherlands (in charge of logistics and documentation).

The Government of the Republic of Fiji is represented by:

HE Mr Filipo Tarakinikini, Permanent Representative of the Republic of Fiji to the United Nations, New York,

Ms Robyn-Ann Mani, Second Secretary, Permanent Mission of the Republic of Fiji to the United Nations Office and other international organisations in Geneva,

Ms Ana Rokomokoti, Head of Law and Assistant Professor, Fiji National University,

Mr Andrew Tucker, Director, The Hague Initiative for International Cooperation (thinc.), Adviser,

Mr Pieter Hoogendoorn, Chair, The Hague Initiative for International Cooperation (thinc.), Adviser,

Mr Matthijs de Blois.

The Government of the Republic of Maldives is represented by:

HE Ms Aishath Shaan Shakir, Ambassador of the Republic of Maldives to the Federal Republic of Germany,

as Head of Delegation;

Mr Shaffau Ibrahim, First Secretary, Embassy of the Republic of Maldives to the Kingdom of Belgium,

Ms Amy Sander, Essex Court Chambers, member of the Bar of England and Wales,

Ms Naomi Hart, Essex Court Chambers, member of the Bar of England and Wales.

Le Gouvernement du Royaume d'Espagne est représenté par :

M. Santiago Ripol Carulla, chef du bureau du droit international, ministère des affaires étrangères du Royaume d'Espagne,

comme chef de délégation ;

S. Exc. M^{me} Consuelo Femenía Guardiola, ambassadrice du Royaume d'Espagne auprès du Royaume des Pays-Bas,

M^{me} Andrea Gavela Llopis, avocate principale de l'État, ministère des affaires étrangères du Royaume d'Espagne,

M. Emilio Pin Godos, chef adjoint du bureau du droit international, ministère des affaires étrangères du Royaume d'Espagne,

M. Juan Almazán Fuentes, conseiller juridique, ambassade du Royaume d'Espagne au Royaume des Pays-Bas,

M^{me} Elisabet Jiménez Perdigones, assistante, ambassade du Royaume d'Espagne au Royaume des Pays-Bas (chargée de la logistique et de la documentation).

Le Gouvernement de la République des Fidji est représenté par :

S. Exc. M. Filipo Tarakinikini, représentant permanent de la République des Fidji auprès de l'Organisation des Nations Unies (New York),

M^{me} Robyn-Ann Mani, deuxième secrétaire, mission permanente de la République des Fidji auprès de l'Office des Nations Unies et des autres organisations internationales à Genève,

M^{me} Ana Rokomokoti, directrice de la faculté de droit et professeure adjointe à l'Université nationale des Fidji,

M. Andrew Tucker, directeur, The Hague Initiative for International Cooperation (thinc.), conseiller,

M. Pieter Hoogendoorn, président, The Hague Initiative for International Cooperation (thinc.), conseiller,

M. Matthijs de Blois.

Le Gouvernement de la République des Maldives est représenté par :

S. Exc. M^{me} Aishath Shaan Shakir, ambassadrice de la République des Maldives auprès de la République fédérale d'Allemagne,

comme cheffe de délégation ;

M. Shaffau Ibrahim, premier secrétaire, ambassade de la République des Maldives au Royaume de Belgique,

M^{me} Amy Sander, Essex Court Chambers, membre du barreau d'Angleterre et du pays de Galles,

M^{me} Naomi Hart, Essex Court Chambers, membre du barreau d'Angleterre et du pays de Galles.

The PRESIDENT: Please be seated. The sitting is open. The Court meets this afternoon to hear Spain, Fiji and the Maldives on the questions submitted to it by the United Nations General Assembly. As the delegations are aware, they must keep to the 30-minute speaking time. I shall now give the floor to the representative of Spain, Ms Andrea Gavela Llopis. You have the floor, Madam.

Ms GAVELA LLOPIS:

1. Mr President, esteemed Members of the Court, it is an honour to speak before this Court on behalf of the Kingdom of Spain. Spain, pursuant to the invitation by the Court, in accordance with Article 66 of its Statute, presented a written statement on 25 July 2023.

2. The current oral intervention aims to complete that Written Statement and furnish the Court with some elements that, from the Spanish point of view, may be of help in discharging the request made by the General Assembly.

3. Spain, in this oral intervention, will amply rely on the Advisory Opinion rendered on 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, as it is of the view that most of the Court's arguments and replies to be found in this Opinion are of paramount relevance and are also applicable to the present case.

4. We are going to address the Court in two main blocks:

- In the first one, we will briefly analyse the jurisdiction of the Court and then examine the international law applicable to the case, affirming that Israel is bound by this law.
- In the second one, we will elaborate on the particular issue of international responsibility of States in case of serious breaches of international rules that protect the basic interests of the international community as a whole.

5. This second part will be dealt by Professor Mr Ripol Carulla, Head of the International Legal Office, while the first part will be dealt by Mr Emilio Pin, Deputy Head of the International Legal Office, to whom I invite you to give the floor now.

The PRESIDENT: I thank Ms Llopis. I now give the floor to Mr Emilio Pin. You have the floor, Sir.

Mr PIN:

1. Mr President, esteemed Members of the Court, it is an honour to speak before this Court on behalf of the Kingdom of Spain.

1. JURISDICTION

2. The competence of the Court to give the advisory opinion requested by the General Assembly in its resolution 77/247 is based on Article 65, paragraph 1, of its Statute. The General Assembly, which seeks the advisory opinion, is authorized to do so by Article 96, paragraph 1, of the Charter.

3. The questions are directed to the legal consequences arising from a given factual situation considering international law. It is indeed a question of legal character. Therefore, Spain is of the view that the Court has jurisdiction to give the advisory opinion requested by resolution 77/247 of the General Assembly.

4. The lack of consent to the Court's contentious jurisdiction by an interested State has no bearing on the Court's jurisdiction to give an advisory opinion.

5. The goal of the request before the Court is to obtain from it an advisory opinion which the General Assembly deems of assistance to it for the proper exercise of its functions and responsibilities.

2. RELEVANT RULES AND PRINCIPLES OF INTERNATIONAL LAW

6. Mr President, distinguished Members of the Court, both Israel and Palestine are under the obligation to observe the rules of international law.

2.1. Prohibition of the use of force, illegal territorial acquisition and principle of self-determination

7. In the 1967 armed conflict, Israeli forces occupied all the territories that had constituted Palestine under the British Mandate (including those known as the West Bank) located east of the Green Line. This occupation was immediately and unanimously condemned by Security Council resolution 242 (1967), which underlined that "all Member States, in accepting the Charter of the United Nations, have undertaken to act in accordance with Article 2 of the Charter".

8. The principle of prohibition of the use of armed force is one of the fundamental principles of international law and, as formulated in General Assembly resolution 2625 (XXV), is accompanied by the following corollary: “No territorial acquisition resulting from the threat or use of force shall be recognized as legal”. The Court, which has on several occasions affirmed the importance of this principle has not hesitated to apply this principle to the Israeli occupation of the Palestinian territories. In the Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories* (2004), the Court has recalled the principle of the inadmissibility of the acquisition of territory by war. The Court concluded: “Under customary international law, these were therefore occupied territories in which Israel had the status of an occupying Power”. Finally, the Court added: “Subsequent events in these territories . . . have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power”. Although Israel finally withdrew its civilian and military presence from the Gaza Strip in 2005, it has maintained full control of its borders, coastline and airspace ever since. Consequently, as the Security Council has affirmed, the Gaza Strip constitutes an integral part of the territory occupied in 1967.

9. The Court concluded that Israel’s settlement policies in the Occupied Palestinian Territory, the measures taken with regard to Jerusalem and the construction of the wall have been established in violation of international law, not only because they are contrary to the Fourth Geneva Convention, but also because they prevent the exercise by the Palestinian people of their right to self-determination. In its construction, the Court points out that the wall, the temporary nature of which is open to doubt, is accompanied by a regulatory régime aimed at annexing the occupied territories. This aim constitutes a serious violation of the rules of international humanitarian law incumbent upon Israel as the occupying Power, has the effect of violating the right to self-determination of the Palestinian people, and the human rights of the inhabitants of these territories. These statements are also applicable to the Gaza Strip. Israel’s withdrawal from Gaza in 2005 has not meant that the occupation of the territory came to an end, as Israel has retained effective control over the territory through its control of airspace, territorial sea and external land boundaries.

10. The extensive documentation submitted to this advisory procedure demonstrates that, 20 years after the Court's Opinion, Israel continues to implement its policies, prolonging the very serious violations of international law found by the Court.

2.2. Human rights law

11. Mr President, distinguished Members of the Court, on 3 October 1991, Israel ratified both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the United Nations Convention on the Rights of the Child. As stated by the Court, the protection offered by human rights conventions does not cease in case of armed conflict.

12. Regarding the territorial scope of those instruments, they are applicable in respect of acts executed by a State in the exercise of its jurisdiction outside its own territory, that is, that they apply both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction.

13. Those elements concur in this case; therefore, Spain considers that those instruments are applicable within the Occupied Palestinian Territory.

14. As stated by the Court in its Advisory Opinion of 2004, the territories occupied by Israel have been now, for over 50 years, subject to its territorial jurisdiction as the occupying Power. In the exercise of the powers available to it on this basis, Israel is bound by the provisions of human rights law and, furthermore, it is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities.

15. Having determined the applicability of human rights law within the Occupied Palestinian Territory, it is time to seek whether Israeli policies and practices referred to in paragraph 18 (a) of General Assembly resolution 77/247 have violated those rules and, therefore, have infringed the human rights of Palestinians living in the territory occupied by Israel. Among those rights that are being violated are those of Articles 17 (1) and 12 (1) of the International Covenant on Civil and Political Rights.

16. Also, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has underlined in her latest report to the Human Rights Council that Israeli

forces often detain individuals without charge or trial, in what has been denominated “administrative detention”. Administrative detention is permissible only under very strict circumstances and must always be carried out in line with the protection afforded under international law.

17. Palestinians in the occupied Palestinian territories are subject to a system of jurisdictional fragmentation in the context of a structure of institutionalized discrimination. Israeli military courts enforce military law upon Palestinians, while Israeli courts apply Israeli civil law to Israelis, including settlers.

18. Regarding the International Covenant on Economic, Social and Cultural Rights, there are several provisions affected by Israel’s policies and practices in the occupied Palestinian territories, for example: the right to work (Articles 6 and 7); protection and assistance accorded to the family and to children and young persons (Article 10); the right to an adequate standard of living, including adequate food, clothing and housing, and the right “to be free from hunger” (Article 11); the right to health (Article 12) and the right to education (Articles 13 and 14). Similar provisions can be found in Articles 14, 16, 27 and 28 of the United Nations Convention on the Rights of the Child.

19. State parties to the Convention on the Rights of the Child, according to its Article 2, shall respect and ensure the rights set forth in it to each child within their jurisdiction. Of particular concern are the detention, interrogation, prosecution and imprisonment of numerous Palestinian children by Israeli occupation forces, practice that is contrary to Article 37, paragraph (b), of that Convention.

20. Certain policies and practices of Israel in the occupied Palestinian territories impose restrictions on the freedom of movement of the inhabitants of the occupied Palestinian territories, and deprive a significant number of Palestinians of their freedom to choose their residence and have, as well, repercussions for agricultural production, through the confiscation and destruction of agricultural assets. On the other hand, the population of the occupied Palestinian territories is experiencing increasing difficulties regarding access to health services, educational facilities and sources of water, impeding the exercise by the persons concerned of the right to health, to education, to water, to sanitation and to an adequate standard of living. All these difficulties and restrictions infringe a number of rights of Palestinians residing in the territory occupied by Israel which cannot be justified neither by military exigencies, nor by the requirements of national security or public order.

2.3. International humanitarian law

21. Mr President, distinguished Members of the Court, the International Law Commission, in the report of its seventy-third session, has referred to the basic rules of international humanitarian law as having the status of a peremptory norm of general international law (*ius cogens*), with the legal consequences that that status may entail.

22. The provisions of the Hague Regulations, annexed to the Fourth Hague Convention of 1907, to which Israel is not a party, have become nevertheless part of customary international law. Particularly pertinent in the present case is Section III of those Regulations, which concerns “Military authority over the territory of the hostile State”. Furthermore, the Fourth Geneva Convention, to which Israel is a party, is applicable in any occupied territory in the event of an armed conflict and, as the Court has assessed, it is applicable to the territories occupied by Israel since 1967, including East Jerusalem.

23. Regarding Israeli settlements, Article 49, paragraph 6, of the Fourth Geneva Convention provides that “[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”. It prohibits also any measure taken by an occupying Power in order to organize or encourage transfer of parts of its own population into the occupied territory. Since 1977, Israel has conducted a policy and developed practices involving the establishment of settlements in the occupied Palestinian territories which are in contravention of the aforementioned Article 49, paragraph 6. Therefore, the Israeli settlements in the occupied Palestinian territories, including East Jerusalem, have no legal validity and constitute a flagrant violation of international law and a major obstacle to the achievement of the two-State solution, as stated repeatedly by relevant United Nations Security Council resolutions. The establishment of the Israeli settlements in the occupied Palestinian territories is tending to alter the demographic composition of that territory, contributing to demographic changes, all in contravention of Article 49, paragraph 6, of the Fourth Geneva Convention.

24. The practice of demolitions results in the forcible transfer or forced eviction of Palestinians and impedes a *de facto* return of Palestinian families and communities to their original dwellings, all in contravention of international humanitarian law.

25. Furthermore, in 2004 the Court considered that the construction of the wall and its associated régime create a “*fait accompli*” on the ground that could well become permanent, in which case it would be tantamount to a *de facto* annexation, as well as a contribution to further alterations of the demographic composition of the occupied Palestinian territories.

26. Articles 47, 49, 52, 53 and 59 of the Fourth Geneva Convention remain applicable to the occupied Palestinian territories and are to be taken into account in this case.

27. Spain is of the view that neither Article 51 of the United Nations Charter, nor the state of necessity, have any relevance in this case in order to preclude the wrongfulness of those actions.

Mr President, let me now invite you to give the floor to Professor Santiago Ripol, Head of the International Legal Office.

The PRESIDENT: I thank Mr Pin. I now give the floor to Professor Ripol. You have the floor, Professor.

Mr RIPOL CARULLA:

CONSEQUENCES OF VIOLATION OF INTERNATIONAL OBLIGATIONS

1. Mr President, distinguished Members of the Court, what are the legal consequences arising from the repeated, permanent and aggravated non-compliance of core rules of international law?

This is the question the General Assembly requested to the Court. When this question is examined from the perspective of the law of State responsibility, the importance of the advisory opinion becomes critical.

2. Articles 40 and 41 of the 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts answer this question.

According to these Articles, a serious breach of an obligation established for the protection of the interests of the international community as a whole entails the legal consequences stipulated for all breaches of international law and some particular consequences.

Therefore, the responsible State is obliged

— to cease the wrongful act,

— to give, if appropriate, guarantees and assurances of non-repetition, and

— to make reparation.

Moreover, the responsible State is bound to continue performance of the international obligation.

On the other hand, failure to comply with international obligations gives also rise to the right for the injured State to seek redress or take countermeasures.

However, it has been said, Article 41 states that, besides these “ordinary” consequences, serious breaches of *ius cogens* rules gives rise to some additional particular consequences, which, generally speaking, imply certain obligations for all other States to respond to the wrongful act: namely obligation to co-operate with and bring to an end the alleged violation, obligation not to recognize the illegal situation and obligation not to render aid or assistance in maintaining the situation.

3. Mr President, my intervention will focus on these particular obligations of all States (other than the injured State). In its 2004 Advisory Opinion on the *Wall*, the Court briefly referred to these additional consequences.

Twenty years later, with the worsening of the situation in the Occupied Palestinian Territory, the Court is called upon to set out in greater detail these obligations.

4. Mr President, distinguished Members of the Court, the duty to co-operate to bring to an end remains the first obligation of States, according to Article 41 of the Draft Articles. This obligation to co-operate shall be carried out by *all States*.

In the Israeli-Palestinian conflict, co-operation among all States has been organized in the framework of the United Nations.

Once again, 20 years after the Advisory Opinion on the *Wall* was passed, it is an indisputable reality

(a) that the situation in Palestine has worsened; and

(b) that resolutions of the Security Council and the General Assembly have repeatedly condemned the actions of the parties and repeatedly demanded the cessation of the violations of international law. However, such resolutions have failed to establish redress and sanction measures.

Therefore, the reference of Article 41 to the action of *all States* becomes critical. In some way paragraph 159 of the Advisory Opinion on the *Wall* underlines this when this paragraph

establishes that “*it is also for all States*” to take measures to end the breach. Moreover, in the comments to Conclusion 19 of the Draft conclusions on identification and legal consequences of peremptory norms of general international law (*ius cogens*), we can read that this statement suggests “that, over and above collective action, there is an obligation on individual States to make efforts to bring situations created by the breach to an end”.

5. In the current circumstances, maybe the Court could determine what such an obligation to co-operate might consist of in this case.

In doing so, the Court may take into consideration the numerous resolutions of the Security Council and the General Assembly, especially those resolutions stating that States are obliged not to take measures that would imply changes in the status of the occupied territories, including East Jerusalem and the Gaza Strip. The corollary is clear: “establishing diplomatic missions in the Holy City” is a serious threat to the stability of peace in the region and the world.

Coming back to the co-operation of all States within the bodies of the United Nations, the Court could determine whether the obligation of all States to co-operate to bring to an end any serious violations of peremptory norms entails, within the Security Council in particular, the duty to not prevent, hinder or delay collective action in favour of the peaceful resolution of the conflict.

6. Mr President, let me move on now to consider the two particular duties included in Article 41, paragraph 2, of the 2001 Draft Articles: namely the duty not to recognize the illegal situation and the duty not to render aid or assistance in maintaining this situation.

What situation?

The last resolutions adopted by the Security Council and the General Assembly on the Israeli-Palestinian conflict update the scope of the current situation that should not be legally recognized.

Certainly, resolution 74/88 of the General Assembly, the first one including this formula,

“[c]alls upon all States . . . not to recognize, and not to render aid or assistance in maintaining, *the situation created by measures that are illegal under international law, including those aimed at advancing annexation in the Occupied Palestinian Territory*”.

Since these two obligations have been reiterated by the Court and other United Nations bodies in this, but also in other situations, they are to be considered as customary law (something that by the way the International Law Commission has already affirmed).

7. Finally, let me, Mr President, refer briefly to paragraph 3 of Article 41 of the Draft Articles, which states that international law may recognize additional legal consequences deriving from the legal régime to which the primary rule that has been violated belongs.

These particular obligations can be found either in the foundation of the legal régime particular or in Security Council resolutions.

Articles 47 and 146 of the Fourth Geneva Convention are good examples of obligations provided for in the foundational treaties of a concrete, a particular legal régime, like international humanitarian law. While Article 47 establishes the inviolability of the rights of persons in occupied territories, Article 146 refers to the obligation of the States parties to the Convention to prosecute and condemn persons who commit or order to be committed any of the grave breaches of the Geneva Convention.

That said, these obligations linked to a particular legal régime sometimes are specified by the Security Council itself. This is the case of resolution 2334 (2016) which requires a State to distinguish in their relevant dealings between the territory of the State of Israel and the territories occupied since 1967.

8. Mr President, distinguished Members of the Court, Spain formulates these considerations within the framework of a consultative procedure, aware that the Court — guardian of international legality — can offer the United Nations arguments to adopt decisions to address the situation and, at the same time, contribute to the clarification and development of the international legal order.

Thank you very much.

The PRESIDENT: I thank the delegation of Spain for its presentation. I invite the next participating delegation, Fiji, to address the Court and call upon Mr Filipo Tarakinikini to take the floor.

Mr TARAKINIKINI:

1. Mr President and esteemed Members of the International Court of Justice, it is my great honour to appear before you today on behalf of the Republic of Fiji.

2. Mr President, for many decades Fiji has built a tradition of peacekeeping. Our commitment to world peace is unwavering and we are resolute in our efforts to contribute to global stability. I have

personally had the privilege of leading peacekeeping operations in the Middle East over a period of more than 20 years.

3. Mr President, Members of the Court, Fiji supports all efforts to establish a comprehensive, just and lasting peace for both Israelis and Palestinians. Efforts that recognize the right of the Palestinian people to self-determination and the right of the Jewish State of Israel to exist as a sovereign State with secure borders. Efforts that emphasize the need for the parties to engage in constructive negotiations, as envisaged by the Security Council and the General Assembly.

4. Fiji affirms the important role of this Court as the highest judicial organ of the United Nations in resolving disputes between States and assisting United Nations organs in their activities.

5. In so doing, the Court must promote the purposes and principles of the United Nations Charter. According to Article 1 of the United Nations Charter, one of the main purposes of the United Nations is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”. Fiji strongly believes that the only way to achieve truly sustainable peace between Israel and the Palestinian people — indeed between any neighbours — is through mutual respect.

6. As reflected in our Written Statement, Fiji considers it essential to maintain and uphold the legal framework agreed between the parties and sanctioned by the Security Council to resolve the Israeli–Palestinian dispute. That framework is founded on the understanding that Jews and Arabs must coexist in a small piece of territory. This requires direct negotiations between the parties for an agreed outcome.

7. Mr President, Members of the Court, the General Assembly has requested the Court to answer certain questions that focus on the legal consequences of the policies and practices of only one party to this dispute.

8. To answer these questions, the Court would need to carry out an independent judicial assessment of both the law and the facts, on virtually every aspect of the Israel–Palestine dispute, taking account of the relevant context. This is not an easy task. As Judge Higgins noted in her

separate opinion in the *Wall* Advisory Opinion: “[t]he law, history and politics of the Israel-Palestine dispute is immensely complex”. Further, “[c]ontext is usually important in legal determinations”¹.

9. In Fiji’s view, this Court has unfortunately been presented in these proceedings with a distinctly one-sided narrative. This fails to take account of the complexity of this dispute and misrepresents the legal, historical and political context.

10. In its Written Statement, Fiji has provided several reasons why the Court should exercise its judicial discretion not to render an advisory opinion on the questions that have been posed by the General Assembly:

- (i) first, the request is a legal manoeuvre to circumvent the existing internationally sanctioned and legally binding framework for resolution of the Israel-Palestine dispute;
- (ii) second, to give an opinion in this case “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”²; and
- (iii) third, due to the one-sided formulation of the questions posed in resolution 77/247, the Court does not have before it the accurate and reliable information that it would need to render an opinion on the questions posed.

11. Mr President, Members of the Court, in this oral presentation I will address the first and third of these issues.

THE PEACE PROCESS AND LEGALLY BINDING FRAMEWORK

12. I turn to the existing framework.

13. In these proceedings, the Court has been asked to render an advisory opinion that may well mean, in effect, the “immediate”, “unconditional” and “total” end to the occupation — that is, withdrawal of all Israeli military and civilians from the entirety of the West Bank, East Jerusalem and Gaza³. This withdrawal must not only be complete, but it must also be unconditional — in other words, Israel may not impose or require any limitations or conditions. This unconditionality is

¹ *Wall* Advisory Opinion, separate opinion of Judge Higgins, p. 210, para. 14.

² *Western Sahara* Advisory Opinion, p. 25, para. 33; *Chagos* Advisory Opinion, p. 117, para. 85.

³ See for example Written Statement of the State of Palestine, paras. 7.26 and 7.50; CR 2024/4, p. 94, para. 27 (Sands).

supposedly necessary in order that the Palestinian people have a sovereign State on such territory, which they assert is the only way to achieve justice and therefore peace.

14. Fiji respectfully submits that this demand of a complete and unconditional withdrawal circumvents the peace process and the agreements that have been made in pursuit of that process.

15. Mr President, the fact is that, from 1993, Israel and Palestine entered into the series of agreements known collectively as the “Oslo Accords”. The parties expressed the intention to “put an end to decades of confrontation and to live in peaceful coexistence, mutual dignity and security, while recognizing their mutual legitimate and political rights”⁴. To that end, they agreed on a wide range of interim measures, pending the achievement of a final agreement through permanent status negotiations.

16. Some of those interim measures include:

- (a) The Palestinian Authority was established.
- (b) Powers and responsibilities were transferred from the Israeli military government and its civil administration to the Palestinian Authority, while Israel continued to exercise powers and responsibilities not so transferred.
- (c) Direct, free and general political elections were to be held by the Palestinians.
- (d) The West Bank was divided into three areas: A, B and C. The Palestinians would obtain exclusive control over Area A; Area B would be under joint Israeli/Palestinian control; and Area C would be under exclusive Israeli control.
- (e) Lastly, the parties would enter negotiations on the permanent status to resolve the remaining issues, which included “settlements”, “borders”, “Jerusalem” and “security”⁵.

17. In addition, the Oslo Accords contain a specific dispute resolution mechanism, and do not permit either party unilaterally to commence or ask others to commence external legal proceedings⁶.

18. Since 1993, an extensive set of arrangements has been put in place to operationalize the agreements.

⁴ Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, 28 Sept. 1995, preamble.

⁵ Declaration of Principles on Interim Self-Government Arrangements 1993, Art(s). I and V.

⁶ *Ibid.*, Art. XXI.

19. In 2003, the General Assembly⁷ endorsed the Oslo Accords and the Security Council⁸ has “[e]ndorse[d] the Quartet Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict”. This Court itself confirmed the importance of the Oslo Accords and the Roadmap in the *Wall* Advisory Opinion in 2004⁹.

20. According to the Roadmap,

“a two state solution to the Israeli-Palestinian conflict will only be achieved through an end to violence and terrorism, when the Palestinian people have a leadership acting decisively against terror and willing and able to build a practicing democracy based on tolerance and liberty, and through Israel’s readiness to do what is necessary for a democratic Palestinian state to be established, and a clear, unambiguous acceptance by both parties of the goal of a negotiated settlement”¹⁰.

21. The thrust of the Oslo Accords and the Roadmap is mutual performance and good faith negotiation, leading to a consensual outcome.

22. The Oslo Accords are legally binding¹¹. Remarkably, the Palestinians do not refer to these agreements in their Written Statement, while less than 12 months ago both Israel and Palestine reaffirmed their “unwavering commitment to all previous agreements between them” and “to address all outstanding issues through direct dialogue”¹².

23. Mr President, it is our submission that the request to this Court to opine on questions that address the legal obligations of only one party to this dispute conflicts with the clear rights and obligations of both parties in the Oslo Accords and the Roadmap, and which exclude recourse to this Court.

24. For this reason, Fiji respectfully submits that the Court should exercise its discretion not to render an opinion on those questions.

⁷ General Assembly resolution ES-10/14, Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory, 8 Dec. 2003, UN doc. A/RES/ES-10/14 (UN Dossier No. 1226).

⁸ Security Council resolution 1515, The situation in the Middle East, including the Palestinian question, 19 Nov. 2003.

⁹ *Wall* Advisory Opinion, p. 158, para. 77.

¹⁰ “A performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict” (<https://peacemaker.un.org/israel-palestine-roadmap2003>).

¹¹ Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’, International Criminal Court, 5 Feb. 2021, Pre-Trial Chamber I, Partly dissenting opinion of Judge Péter Kovács’ (ICC-01/18-143-Anx1).

¹² <https://il.usembassy.gov/joint-communiqué-from-the-march-19-meeting-in-sharm-el-sheikh/>.

LEGAL AND FACTUAL EVIDENCE

25. Mr President, Members of this honourable Court, I now turn to the issue of legal and factual evidence.

26. As stated, in Fiji's view, the Court should decline to answer the questions posed. But were it to do so, it would need to gather and independently assess the probative value of evidence on issues raised within the established legal framework of the dispute.

27. This Court would have to decide, as it has previously explained,

“whether [it] has before it 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”¹³.

28. In Fiji's view the Court cannot simply defer to the reports of United Nations bodies. In order to fulfil its judicial function, the Court must reach its own independent findings of fact.

29. Further, Fiji submits that, that due to the selective and one-sided formulations of the questions, the Court does not have before it all the evidence it would need to exercise its judicial function.

30. Mr President and esteemed Members of the Court, the point here is that the Court is being asked to focus solely on the policies and practices of one of the parties to this dispute, to the exclusion of the policies and practices of the other. This is highly problematic. If the Court would limit itself to consideration of the questions asked, it would be unable to consider the relevant broader context, and it will also not have before it sufficient information and evidence to enable it to arrive at a judicial conclusion upon questions of fact that are in dispute, all of which would be necessary to give an opinion compatible with its judicial character.

31. We will illustrate this by looking briefly at three of the issues raised by the questions that have been posed to the Court, and these are: withdrawal and security, territorial sovereignty, and the right to self-determination.

¹³ *Western Sahara*, pp. 28-29, para. 46; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion*, I.C.J. Reports 1950, pp. 71-72; *Wall Advisory Opinion*, p. 161, para. 56; *Chagos Advisory Opinion*, p. 114, para. 71.

Withdrawal and security

32. First, withdrawal and security. Palestine argues that the occupation is illegal and the legal consequence is that Israel must withdraw from the occupied territories. As highlighted earlier, any assessment of the questions posed would require the Court to consider the legal rights and obligations of both parties under the Oslo Accords.

33. The Oslo Accords were built upon Security Council resolutions 242 and 338, which were adopted following the 1967 and 1973 Arab-Israeli Wars. They recognize the legitimate security needs of Israel to prevent further attack.

34. Resolutions 242 and 338, and thus the Oslo Accords, do not oblige Israel to withdraw from all the territories.

35. Further, resolutions 242 and 338 refer to peace being established by the application of two mutually dependent principles:

“(i) Withdrawal of Israeli armed forces from territories occupied in the recent conflict; and (ii) Termination of all claims or states of belligerency and respect for and acknowledgment 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.”

36. By incorporating these resolutions into the Oslo Accords, the parties recognize that Israel’s withdrawal and the creation of conditions providing security to Israel are interdependent. As Judge Higgins stated in the *Wall*¹⁴ Opinion, both “Israel and Palestine [need] to move in parallel to secure the necessary conditions — . . . for Israel to withdraw from Arab occupied territory and for Palestine to provide the conditions to allow Israel to feel secure in so doing”.

37. In other words, if the Court is to consider the legal consequences of the alleged Israeli refusal to withdraw from territory, it should also look at what Palestine must do to ensure Israel’s security.

38. Mr President and Members of this honourable Court, the events of 7 October 2023 have shown us what could happen if there were a complete and unconditional withdrawal without the necessary arrangements in place to guarantee the security of Israel and its population. At the very least, the Court would need to examine and evaluate evidence concerning the question whether the 1949 Armistice Lines are “secure boundaries” within the meaning of resolutions 242 and 338. This

¹⁴ *Wall* Advisory Opinion, separate opinion of Judge Higgins, p. 214, para. 30.

in turn would require examination of the threats facing Israel emanating from the occupied territories and the broader region.

Territorial sovereignty

39. Second, territorial sovereignty. Mr President and Members of the Court, the General Assembly’s request speaks of Israel’s “prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967”. This asks the Court to presuppose that all the territories held during the Jordanian and Egyptian occupation within the 1949 Armistice Lines are “Palestinian” — that is, that they are sovereign territories of Palestine and thus not of Israel.

40. A precise definition of the scope of territorial claims is important because

“[t]erritorial sovereignty is a fundamental principle of the international political and legal order . . . It ‘serves to divide between nations the space upon which human activities are employed, in order to assure them at all points the minimum of protection of which international law is the guardian.’”¹⁵

41. In the context of the questions put to this Court, territorial sovereignty is critical because without clarifying the respective claims of Israel and the Palestinians concerning the sovereign status of the territory, it would be impossible to answer the questions of territorial scope of the Palestinian self-determination claim or the occupation.

42. Fiji notes that the question of territorial scope — both of the State of Israel and of the self-determination claim of the Palestinian people — is in dispute between the parties.

43. And yet the way the questions are drafted excludes the possibility of the Court considering Israel’s claims to the sovereignty over the territory and asks the Court to assume without further investigation that these territories are somehow “Palestinian”.

44. Furthermore, the Court would need to assess whether the Palestinians have sovereignty and, if so, over which territory¹⁶. This would include an examination, among other things, of the

¹⁵ Eyal Benvenisti, *Amicus Curiae in the Proceedings Relating to the Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court’s Territorial Jurisdiction in Palestine*, ICC, paras. 32-33.

¹⁶ *Ibid.*, para. 34.

history of Palestinian assertions of claims¹⁷ and of whether Palestinians make different assertions of sovereignty in different fora¹⁸.

45. Palestine asserts that the provisions in the Mandate for Palestine concerning the establishment of a Jewish homeland as envisaged in the Balfour Declaration were illegitimate and in contravention of the Covenant of the League of Nations. It appears to claim that all the territory of Mandate Palestine — even including what is generally accepted to be the territory of the State of Israel — belongs to the Palestinian people.

46. Mr President, Israel¹⁹ asserts, and Fiji agrees, that the Mandate for Palestine, including its provisions concerning the establishment of the Jewish homeland, such as the right of the Jewish people to live in and closely settle the land, was a binding instrument of international law. Israel also argues that the relevance of the rights conferred by the Mandate for Palestine was affirmed in Article 80 of the United Nations Charter, the so-called “Palestinian clause”²⁰.

47. There is thus a dispute about territorial sovereignty²¹. Fiji submits that this dispute cannot and should not be resolved through means of the requested advisory opinion, for two reasons.

48. The first reason is that the question of “borders” and therefore the scope of territorial sovereignty was expressly agreed to be resolved through the permanent status negotiations to which the parties have committed themselves in the Oslo Accords. For the reasons set out earlier, this precludes the matter being adjudicated via an advisory opinion procedure.

49. The second reason is that, in any event, because of the way the questions to the Court have been formulated, the Court simply does not have before it sufficient information and evidence to

¹⁷ Original (1964) version of the Palestine National Charter.

¹⁸ Eyal Benvenisti, *Amicus Curiae in the Proceedings Relating to the Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court’s Territorial Jurisdiction in Palestine*, ICC, para. 44.

¹⁹ State of Israel, Office of The Attorney General, *The International Criminal Court’s Lack Of Jurisdiction Over The So-Called ‘Situation In Palestine’*, 20 Dec. 2019 (<https://www.gov.il/BlobFolder/reports/20-12-2019/en/Memorandum-Attorney-General.pdf>).

²⁰ See *ibid.*, para. 28.

²¹ For a concise overview of the history and some legal claims, see written statements submitted under Practice Direction XII: Written Statement of The European Leadership Network and UK Lawyers For Israel, (<https://www.uklfi.com/elnet-and-uklfi-challenge-false-allegations-against-israel-in-international-court>); and Written Statement submitted by the International Association of Jewish Lawyers and Jurists under ICJ Practice Direction XII in the Advisory Proceedings on the “Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem” (https://www.9brchambers.co.uk/media/1916/240216_ijl-statement_icj_final.pdf).

enable it to arrive at a judicial conclusion on the disputed issue of the geographic limits of the territorial sovereignty of Palestine and Israel.

Self-determination

50. I now turn to self-determination.

51. The questions before the Court ask it to assume that Israel is violating “the right of the Palestinian people to self-determination”.

52. The question of self-determination raises the question of territorial scope. This raises the evidentiary concerns I have just expressed.

53. Moreover, Fiji notes that the right to self-determination is a relative right²². It should not involve changes to existing frontiers²³. In the context of Israel/Palestine, this means that the Court would need to ascertain whether the Palestinians’ exercise of their right to self-determination has infringed the territorial integrity, political inviolability or legitimate security needs of the State of Israel.

54. By asking the Court to look only at the policies and practices of Israel, resolution 77/247 shields from the Court’s purview the policies and practices of Palestine. The result, in Fiji’s submission, is that the Court simply does not have before it sufficient information concerning the policies and practices of Palestine, and thus is unable to make a judicial determination on whether, in exercise of their right to self-determination, Palestine has infringed the sovereignty of the State of Israel.

CONCLUSIONS

55. Mr President, esteemed Members of the Court, in conclusion, the relationship between Israel and the Palestinian people is legally, factually and historically complex. There are no simple answers. But there are two parties who need to jointly find a solution and they should be supported to do this.

²² Becker, Tal, “Self-determination in perspective: Palestinian claims to statehood and the relativity of the right to self-determination”, *Israel Law Review*, Vol. 32, Issue 2, Spring 1998, pp. 301-354.

²³ Opinion No. 2 of the Badinter Commission, para. 1; see also Opinion No. 3.

56. Using the advisory opinion procedure to prosecute the alleged violations of international law of one of the parties to the dispute while ignoring possible violations by the other will not promote dialogue, nor foster mutual respect. Rather, it is likely to undermine efforts towards peace that can be best settled through the recommitment of the parties to the processes established under the Oslo Accords. In our view, this is why the General Assembly was seriously divided on whether these questions should be put to the Court for an advisory opinion, and it is also why this honourable Court should refrain from giving one.

57. Fiji respectfully submits that, for all these reasons, the Court should exercise its judicial discretion to decline to provide an advisory opinion on the specific question put to it in the United Nations General Assembly resolution 77/247.

58. Mr President, were the Court to decide to provide an advisory opinion, which Fiji submits it should not, the Court should be cautious to ensure the advisory opinion rendered does not circumvent the binding agreements between the parties but encourages them to promote fruitful negotiations. Furthermore, the Court should ensure that it does not impose obligations and responsibilities on only one party, while disregarding its legitimate concerns.

59. Mr President, Members of this honourable Court, this brings me to the end of Fiji's oral presentation and I thank you.

The PRESIDENT: I thank the delegation of Fiji for its presentation. I now call upon the delegation of the Maldives to address the Court and invite Her Excellency Ms Shakir to take the floor.

Ms SHAKIR:

1. Mr President, Members of the Court, I have the honour to appear before you on behalf of the Republic of Maldives — a State staunchly committed to upholding international law.

2. Support for the Palestinian people, including their pursuit of an independent sovereign State of Palestine, has been a long-standing cornerstone of the Maldives' foreign policy²⁴ and remains so under the Government of President His Excellency Dr Mohamed Muizzu, who took office in

²⁴ See Written Statement of the Maldives, 25 July 2023, paras. 9-13.

November 2023. There are no compelling reasons not to exercise jurisdiction. To the contrary, the dire humanitarian crisis unfolding in Gaza reminds us all that this is a historic opportunity for the Court to pronounce its verdict on the grave injustices that have been long perpetrated against the Palestinian people.

3. The Maldives' Oral Submissions today will come in two parts. Ms Amy Sander will first address the Court on Israel's multiple, serious violations of international law in the Occupied Palestinian Territory, focusing on its practices in relation to water resources. Following this, Dr Naomi Hart will provide concise answers to the two questions which the General Assembly has requested that the Court answer.

4. Before concluding, I would like to once again reiterate our firm belief that the only sustainable solution to the conflict is the establishment of a sovereign and independent State of Palestine, based on the pre-1967 borders, with East Jerusalem as its capital.

5. Mr President, Members of the Court, I thank you for your attention and ask that you give the floor to Ms Sander.

The PRESIDENT: I thank Her Excellency Ms Shakir. I now give the floor to Ms Amy Sander. You have the floor, Madam.

Ms SANDER:

I. INTRODUCTION AND THE SIGNIFICANCE OF WATER RESOURCES

1. Mr President, Members of the Court, representing the final State appearing, I have the honour of identifying the main points addressed during the course of this hearing on the violations by Israel of international law.

2. The Maldives provides this analysis with a focus on the issue of water resources. Why? Because of two streams of significance.

3. First, the significance of water resources to the Palestinian people: in fact, it has been described as the "most vital resource in the [Occupied Palestinian Territory]" by Palestine²⁵. A tidal

²⁵ Written Statement of Palestine, Vol. I, para. 4.146.

wave of suffering has been unleashed by Israeli policies and practices with respect to water resources, which are characterized by *deprivation, denial, discrimination and destruction*:

- (a) *Deprivation* of access to water — many Palestinians in the Gaza Strip simply have, I use the Court’s own words, “no access to . . . potable water”²⁶.
- (b) *Denial* of enjoyment of those resources on a *discriminatory* basis — in the West Bank, where Israel has seized control of water resources²⁷, use of vital groundwaters is marred by grossly inequitable allocations between Israelis and Palestinians²⁸.
- (c) *Destruction* of vital infrastructure, with Israel demolishing sanitation structures and pipelines²⁹.

4. The second stream of significance is to the questions before the Court. The issue of water resources flows through four key aspects of the unlawfulness of Israeli policies and practices on which the Oral Submissions have focused. I address each aspect in turn.

II. VIOLATION OF RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION

- 5. The first key aspect: the violation of the right of the Palestinian people to self-determination.
- 6. The following points are crystal clear.

²⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, para. 70 (emphasis added), cited in CR 2024/7, Egypt, p. 14, para. 21 (Herrera).

²⁷ Written Statement of Palestine, Vol. I, paras. 3.249-3.256; Written Statement of Palestine, Vol. II, para. 4.20; Written Statement of the Maldives, para. 41 (a)-(b).

²⁸ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 30 May 2019, UN doc A/HRC/40/73, para. 48; Report of the United Nations High Commissioner for Human Rights, Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, 15 Oct. 2021, UN doc. A/HRC/48/43, para. 27, cited in CR 2024/4, p. 90, fn. 152 (Sands). See also Written Statement of Palestine, Vol. I, paras. 4.146-4.153; Written Statement of Palestine, Vol. II, para. 4.20.

²⁹ UNGA res. 78/170, Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources, UN doc. A/RES/78/170 (19 Dec. 2023), preamble (cited in CR 2024/5, p. 16, para. 4 (Stemmet)); Report of the United Nations High Commissioner for Human Rights on Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, UN doc. A/HRC/48/43, 15 Oct. 2021, paras. 24 and 52 (cited in Written Statement of the Maldives, para. 41 (d)); Written Statement of Palestine, Vol. I, para. 4.180.

7. First, the Palestinians are a distinct people with a right to self-determination³⁰, an inalienable norm of *jus cogens*³¹.

8. Second, Israel's conduct has violated different components of that right³², notably the right to territorial integrity, the right not to be subjected to demographic manipulation within that territory by a foreign Power, the right of the people to pursue its chosen economic, social and cultural development and its right to exercise permanent sovereignty over its natural resources.

9. The critical importance of this well-established³³ latter component — the Palestinian people's right to exercise permanent sovereignty over their natural resources — was recently stressed by the General Assembly in its resolution of December 2023³⁴. Such resources clearly include water. Israel's policies and practices with respect to water resources — the deprivation, denial on a discriminatory basis and destruction — thus constitute one acutely serious and ongoing facet of the breach of the Palestinian people's right of self-determination. Described by a United Nations body

³⁰ See e.g. CR 2024/4, Palestine (Sands) p. 86, paras. 3-4; CR 2024/5, South Africa (Stemmet) p. 15, para. 4; CR 2024/5, Algeria (Laraba), p. 28, paras. 46-48; CR 2024/5, Saudi Arabia (Atiyah), p. 37, para. 24; CR 2024/5, Bangladesh (Hamidullah), p. 53, para. 2; CR 2024/6 Belize (Shoman), p. 8, para. 1; CR 2024/6, Bolivia (Sarmiento), p. 26, paras. 6-7; CR 2024/6, Brazil (De Tusco), p. 35, para. 11; CR 2024/6, Chile (Torrijo), p. 43, para. 21; CR 2024/7, Colombia (Herrera), p. 15, para. 28; CR 2024/7, Egypt (Moussa), p. 34, para. 37; CR 2024/8, Russia (Tarabin), p. 11, para. 14; CR 2024/8, France (Colas), p. 18, para. 16; CR 2024/8, Guyana (Craven), p. 43, para. 39; CR 2024/9, China (Ma), p. 13, para. 15; CR 2024/9, Iraq (Albarrak), p. 33, para. 15; CR 2024/9, Jordan (Wood), p. 61, para. 7; CR 2024/10, Libya (El Gehani), p. 34, para. 18; CR 2024/10, Malaysia (Hasan), p. 55, para. 18; CR 2024/11, Namibia (Okowa), p. 17, para. 25; CR 2024/11, Norway (Jervell), p. 23, para. 12; CR 2024/11, Oman (Al Harthi), p. 33, para. 5; CR 2024/11, Pakistan (Aslam), p. 36, para. 4; CR 2024/11, Indonesia (Marsudi), p. 48, paras. 41-42; CR 2024/12, Slovenia (Muller), p. 28, para. 2; CR 2024/12, Sudan (Khier), p. 36, para. 2; CR 2024/12, Tunisia (Laghmani), p. 68, para. 9; *Wall Advisory Opinion*, pp. 182-183, para. 118.

³¹ See e.g. CR 2024/4, Palestine (Sands), p. 93, para. 23; CR 2024/5, South Africa (Stemmet), p. 15, para. 4; CR 2024/5, Netherlands (Lefeber), p. 42, para. 5; CR 2024/5, Bangladesh (Hamidullah), p. 59, para. 34; CR 2024/6, Belize (Shoman), p. 8, para. 1; CR 2024/6, Bolivia (Sarmiento), p. 26, para. 7; CR 2024/6, Chile (Torrijo), p. 40, para. 7; CR 2024/7, Egypt (Moussa), p. 30, para. 19 (3) and paras. 37-38; CR 2024/8, The Gambia (Jallow), p. 28, para. 6 and p. 30, para. 17; CR 2024/9, Ireland (Fanning), p. 340, paras. 25 and 28; CR 2024/9, Jordan (Wood), p. 61, para. 5; CR 2024/10, Kuwait (Al Nasser), p. 16, para. 3; CR 2024/10, Libya (El Gehani), p. 34, para. 17; CR 2024/10, Malaysia (Hasan), p. 51, para. 4; CR 2024/11, Oman (Al Harthi), p. 33, para. 7; CR 2024/12, Slovenia (Muller), p. 29, para. 5; CR 2024/12 Sudan (Khier), p. 38, para. 2; CR 2024/12, Tunisia (Laghmani), p. 65, para. 5.

³² See e.g. CR 2024/4, Palestine (Sands), p. 87, para. 6. See also e.g. CR 2024/7, Cuba (Camejo), p. 20, para. 24; CR 2024/7, Egypt (Moussa), p. 34, paras. 40-42; CR 2024/9, China (Ma), p. 13, para. 15; CR 2024/10, Malaysia (Hasan), p. 55, para. 19.

³³ See Written Statement of Palestine, Vol. II, para. 3.24 fn. 398. See also e.g. CR 2024/5, Saudi Arabia (Atiyah), p. 37, para. 24; CR 2024/6, Belize (Shoman), p. 11, para. 15 (a); CR 2024/9, Iran (Najafi), p. 25, para. 31; CR 2024/9, Jordan (Wood), p. 61, paras. 8-9.

³⁴ UNGA res. 78/170, Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources, UN doc. A/RES/78/170 (19 Dec. 2023) (cited in CR 2024/5, South Africa (Stemmet), p. 15, para. 4).

as “one of the most fundamental conditions for survival”³⁵, for a people sufficient clean water is indispensable.

III. PROHIBITION OF ACQUISITION OF TERRITORY BY FORCE

10. Turning to the second key aspect, the policies and practices of Israel in the Occupied Palestinian Territory violate the prohibition of the acquisition of territory by force.

11. This afternoon, we have heard some attempts to muddy the waters in this regard, so I will recall the points of crystal clarity.

12. First, a corollary of the *jus cogens* prohibition of use of force is the prohibition of any³⁶ acquisition of territory by threat or use of force³⁷. Irrespective of international recognition of Palestine’s borders, the applicability of this prohibition to the Occupied Palestinian Territory cannot be in doubt³⁸, as expressly recognized in resolutions of both the General Assembly and Security Council³⁹.

13. Second, international law requires that occupation be temporary⁴⁰.

³⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: The right to water (Art(s). 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN doc. E/C.12.2002/11, 20 Jan. 2003, para. 3.

³⁶ CR 2024/9, Japan (Akande), pp. 51-53, paras. 13-20.

³⁷ See e.g. CR 2024/4, Palestine (Zimmerman), p. 57, para. 7; CR 2024/5, South Africa (Stemmet), p. 16, para. 5; CR 2024/5, Saudi Arabia (Atiyah), p. 38, para. 25; CR 2024/5, Netherlands (Lefeber), p. 46, para. 26; CR 2024/5, Belgium (Koutrolis), p. 65, para. 6; CR 2024/6, Bolivia (Sarmiento), p. 25, para. 2; CR 2024/7, Cuba (Camejo), p. 19, para. 14; CR 2024/7, Egypt (Moussa), p. 30, para. 19 (3); CR 2024/7, United Arab Emirates (Nusseibeh), p. 46, para. 43; CR 2024/8, Guyana (Craven), p. 39, paras. 21-22; CR 2024/9, China (Ma), p. 15, para. 23; CR 2024/9, Ireland (Fanning), p. 39, para. 21; CR 2024/9, Japan (Mikanagi), p. 45, paras. 3-4; CR 2024/9, Jordan (Wood), p. 63, para. 14; CR 2024/10, Libya (El Gehani), p. 33, para. 11; CR 2024/10, Malaysia (Hasan), p. 56, para. 21; CR 2024/11, Namibia (Okowa), p. 13, para. 8; CR 2024/11, Norway (Jervell), p. 24, paras. 17-18; CR 2024/11, Oman (Al Harthi), p. 34, para. 12; CR 2024/11, Pakistan (Aslam), p. 41, para. 19 (b); CR 2024/12, Tunisia (Laghmani), p. 65, para. 5.

³⁸ See CR 2024/9, Japan (Mikanagi), p. 46-48, paras. 6-13.

³⁹ UNGA res. 77/126 (2022), 12 Dec. 2022, para. 7; UNSC res. 252 (1968), 21 May 1968 (cited in CR 2024/9, Japan (Mikanagi), p. 48, para. 12); UNSC res. 2334 (2016), 23 Dec. 2016.

⁴⁰ See e.g. CR 2024/4, Palestine (Reichler), p. 61, para. 3 and CR 2024/6, Belize (Juratowitch), p. 19, paras. 9-10. See also e.g. CR 2024/5, South Africa (Stemmet), p. 16, para. 6; CR 2024/5, Netherlands (Lefeber), p. 46, para. 26; CR 2024/5, Bangladesh (Hamidullah), p. 55, para. 13; CR 2024/6, Chile (Torrijo), p. 47, para. 31; CR 2024/7, Egypt (Moussa), p. 30, paras. 21-22; CR 2024/7, United Arab Emirates (Nusseibeh), p. 46, para. 43; CR 2024/7, United States of America (Vissek), p. 56, para. 33; CR 2024/8, Guyana (Craven), p. 39, para. 21; CR 2024/9, China (Ma), p. 17, para. 32; CR 2024/9, Ireland (Fanning), p. 39, para. 22; CR 2024/9, Jordan (Wood), p. 64, para. 22; CR 2024/10, Kuwait (Al Nasser), p. 17, para. 5; CR 2024/11, Namibia (Okowa), p. 13, para. 7; CR 2024/11, Norway (Jervell), p. 22, para. 10; CR 2024/11, Indonesia (Marsudi), p. 49, para. 56; CR 2024/12, Switzerland (Perrez), p. 46, para. 6. See Written Statement of the Maldives, para. 25.

14. Third, any purported exercise of the use of self-defence must be necessary and proportionate⁴¹.

15. Fourth, and flowing from the three previous points, an occupying Power cannot acquire sovereignty over an occupied territory, including by annexation, irrespective of whether it claims to have acted in self-defence at any point during the occupation⁴².

16. Yet Israel has annexed all of the Occupied Palestinian Territory⁴³, whether through Israeli law or conduct manifesting a *de facto* annexation, creating a “fait accompli”⁴⁴. There is no shortage of evidence on this reality, as emphasized by many United Nations bodies⁴⁵ and demonstrated by the map recently shown by the Prime Minister of Israel before the General Assembly referred to on the first day of this hearing⁴⁶.

17. Israel’s deprivation, denial on a discriminatory basis and destruction with respect to water resources is one facet of this annexation⁴⁷. The scale and nature of Israel’s conduct in this regard makes clear that it forms an integral element of Israel’s establishment of control through coercive measures reflecting its intention to appropriate that territory permanently⁴⁸, the occupation having (to quote the Special Rapporteur) “burst through the restraints of temporariness long ago”⁴⁹.

⁴¹ See e.g. CR 2024/6, Belize (Juratowitch), p. 19, para. 10; CR 2024/5, Netherlands (Lefeber), p. 45, para. 18; CR 2024/7, Egypt (Herrera), p. 33, para. 34; CR 2024/9, China (Ma), p. 16, para. 29; CR 2024/9, Ireland (Fanning), p. 40, para. 23; CR 2024/9, Japan (Akande), p. 53, para. 22; CR 2024/11, Indonesia (Marsudi), p. 49, para. 53; CR 2024/12, Switzerland (Perrez), p. 53, para. 25.

⁴² CR 2024/9, Japan (Akande), p. 51, para. 13. See also e.g. CR 2024/7, Egypt (Moussa), p. 33, para. 34.

⁴³ See e.g. CR 2024/4 Palestine (Malki), p. 52, para. 9; (Reichler), p. 62, para. 4; CR 2024/6, Belize (Juratowitch), p. 21, para. 20; CR 2024/6, Bolivia (Sarmineto), p. 27, para. 16; CR 2024/6, Brazil (De Tusco), p. 36, para. 14; CR 2024/6, Chile (Torrijo), p. 44, para. 23 and p. 46, para. 30; CR 2024/7, Cuba (Camejo), p. 20, para. 19; CR 2024/7, Egypt (Moussa), p. 29, para. 14 and p. 32, para. 29; CR 2024/8, Guyana (Craven), p. 40, para. 24; CR 2024/9, Ireland (Fanning), p. 38, para. 19; CR 2024/9, Jordan (Wood), p. 62, para. 13; CR 2024/10, Malaysia (Hasan), p. 56, para. 21; CR 2024/11, Namibia (Okowa), p. 13, para. 7; CR 2024/11, Pakistan (Aslam), p. 37 para. 7; CR 2024/11, Indonesia (Marsudi), p. 49, para. 55; CR 2024/12, Syria (Al Arsan), p. 58, paras. 20-21.

⁴⁴ *Wall* Advisory Opinion, p. 194, para. 121.

⁴⁵ See the list of UNGA resolutions set out in the Written Statement of Guyana, para. 20. See also Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, 12 Aug. 2022, UN doc. A/HRC/49/87, para. 51; Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel, 14 Sept. 2022, UN doc. A/77/328, p. 2.

⁴⁶ CR 2024/4, Palestine (Malki), p. 53, para. 13.

⁴⁷ See Written Statement of Palestine, Vol. I, para. 4.145. See also e.g. CR 2024/6, Chile (Torrijo), p. 48, para. 36; CR 2024/9, Japan (Akande), p. 50, para. 10; CR 2024/11, Norway (Jervell), p. 25, para. 27.

⁴⁸ CR 2024/6, Belize (Juratowitch), p. 20, para. 18; CR 2024/9, Japan (Akande), p. 49, paras. 5 and 10.

⁴⁹ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 Aug. 2022, UN doc. A/HRC/49/87, para. 11 (cited in CR 2024/4, Palestine (Reichler), p. 68, para. 19).

18. Israel's settlement expansion is plainly another integral element of that annexation, with Palestinians reduced to inhabiting a "fragmented archipelago of disparate patches of land"⁵⁰.

19. Of course, the different aspects of Israel's violations of international law are not watertight from one another. Such prolonged occupation, annexation and settlement expansion also violate the right of self-determination⁵¹, to which I referred earlier, a right which cannot be exercised in the face of a foreign occupier purporting to appropriate territory for itself and thereby dispossess the Palestinian people.

IV. VIOLATION OF THE LAW OF OCCUPATION

20. The third key aspect is that the policies and practices of Israel in the Occupied Palestinian Territory violate the law of occupation.

21. The indisputable starting-point is that, as an occupying power, Israel is bound to respect, throughout the occupied territory, its obligations under international humanitarian law⁵², a régime designed to ensure the protection of the people under occupation⁵³.

22. The Maldives agrees that the continuing applicability of international humanitarian law is without prejudice to the unlawfulness of Israel's occupation⁵⁴.

23. Now, many examples of international humanitarian law breaches have been cited before the Court, including with respect to Israel's settlement policy as a breach of Article 49 of the Fourth Geneva Convention⁵⁵. Israel's policies and practices with respect to water resources constitute a cascade of further violations of the Fourth Geneva Convention and the 1907 Hague Regulations, notably:

⁵⁰ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 July 2021, UN doc. A/HRC/47/57, para. 63 (cited in CR/2024/4 Palestine (Reichler), p. 69, para. 21). See also e.g. CR 2024/9, Jordan (Wood), p. 64, para. 24.

⁵¹ See e.g. CR 2024/4, Palestine (Sands), pp. 87-88, paras. 7-11.

⁵² *Wall* Advisory Opinion, e.g. p. 177, para. 101.

⁵³ See CR 2024/11, Switzerland (Perrez), p. 47, paras. 10-11. See also e.g. CR 2024/5, South Africa (Stemmet), p. 17, para. 1; CR 2024/9, China (Ma), p. 17, para. 33.

⁵⁴ See e.g. CR 2024/5, Netherlands (Lefeber), p. 47, para. 29; CR 2024/9, China (Ma), p. 16, para. 30; CR 2024/9, Jordan (Wood), p. 65, para. 30; CR 2024/11, Norway (Jervell), p. 22, para. 10; CR 2024/11, Pakistan (Aslam), p. 42, paras. 27-28; CR 2024/11, Switzerland (Perrez), p. 45, para. 5; cf. CR 2024/8, France (Colas), p. 20, para. 31.

⁵⁵ CR 2024/7, Colombia (Herrera), p. 16, para. 30; CR 2024/7, Egypt (Moussa), p. 31, para. 23; CR 2024/9, Iran (Najafi), p. 22, para. 17; CR 2024/9, Ireland (Fanning), p. 37, para. 14; CR 2024/10 Kuwait (Al Banai), p. 14, paras. 9-10; CR 2024/10 Malaysia (Hasan), p. 56, para. 21; CR 2024/11, Norway (Jervell), p. 23, para. 11; CR 2024/11, Oman (Al Harthi), p. 34, para. 11; CR 2024/11, Indonesia (Marsudi), p. 50, para. 65; CR 2024/12, Syria (Al Arsan), p. 57, para. 19 and p. 61, para. 36. See Written Statement of Palestine, Vol. II, Chap. 4, Sec. I.

- (a) Israel's conduct is a violation of the rules prohibiting destruction of property, which includes water and sanitation infrastructure, in circumstances where it is clearly not "absolutely necessary" for military operations⁵⁶.
- (b) It is a violation of the prohibition on destruction or removal of objects essential for survival of the civilian population⁵⁷, with water installations and supplies obviously qualifying as such.
- (c) It is a violation of the prohibition on pillage⁵⁸, as well as the rules of usufruct⁵⁹.
- (d) It is also a violation of the obligation to ensure and maintain public health and hygiene in territory it occupies⁶⁰. This goes to a point of grave practical concern — a raft of horrific diseases spring directly from the lack of clean water, with little children particularly vulnerable⁶¹.

V. VIOLATION OF INTERNATIONAL HUMAN RIGHTS LAW INCLUDING THE PROHIBITION OF DISCRIMINATION

24. The fourth and final key aspect is that Israel's policies and practices in the Occupied Territory are in violation of international human rights law, including the fundamental *jus cogens* prohibition of discrimination.

25. The irrefutable starting-point: this is that Israel bears a duty to secure respect for the applicable rules of international human rights law throughout the territory that it occupies⁶².

26. International human rights law encompasses the right to water. Notably:

- (a) That right emanates from Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights⁶³. As the General Assembly affirmed in 2016, "the human rights to safe

⁵⁶ Fourth Geneva Convention, Art. 53; 1907 Hague Regulations, Art. 23 (g).

⁵⁷ First Additional Protocol to the Geneva Conventions, Art. 54 (2).

⁵⁸ Hague Regulations, Art. 47; Fourth Geneva Convention, Art. 33.

⁵⁹ Hague Regulations, Art. 55.

⁶⁰ Fourth Geneva Convention, Art. 56.

⁶¹ Report of the United Nations High Commissioner for Human Rights, Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, 15 Oct. 2021, UN doc. A/HRC/48/43, paras. 59 and 62; statement of Médecins sans frontières, 8 Feb. 2024, available at <https://www.msf.org/gaza-lack-clean-water-brings-disease-and-suffering>.

⁶² *Wall* Advisory Opinion, p. 178, paras. 106 and 111-113. See also e.g. CR 2024/11, Switzerland (Perrez), p. 48, para. 13.

⁶³ UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: "The right to water" (Art(s). 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN doc. E/C.12.2002/11, 20 Jan. 2003, cited in Written Statement of the Maldives, para. 40 (b); UNGA res. 64/292, UN doc. A/RES/64/292, preamble, third paragraph.

drinking water and sanitation as components of the right to an adequate standard of living are essential for the full enjoyment of the right to life and all human rights”⁶⁴.

(b) Further, as a party to the Convention on the Rights of the Child, Israel has expressly undertaken to pursue “full implementation” of each child’s rights to the enjoyment of the highest attainable standard of health, including through the provision of clean drinking water⁶⁵.

27. Equally clearly, international human rights law prohibits discrimination. Notably, pursuant to the Convention on the Elimination of All Forms of Racial Discrimination, Israel is obliged to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, national or ethnic origin, to the enjoyment of rights, which include a right to water⁶⁶.

28. Yet Israel’s discriminatory policies and practices with respect to access to water have been well documented — and condemned — by a deluge of United Nations bodies⁶⁷, with the Committee on the Elimination of Racial Discrimination “appalled at the hermetic character of the separation of the two groups [Jewish communities in illegal settlements on the one hand and Palestinian populations . . . on the other hand] . . . who do not enjoy . . . equal access to . . . water resources”⁶⁸.

29. The impact on women and children is notably egregious, with the dearth of clean water an acute crisis for mothers trying to feed their babies⁶⁹.

⁶⁴ UNGA res. 70/169 (2016), UN doc. A/RES/70/169, 22 Feb. 2016, para. 1 (cited in Written Statement of the Maldives, para. 40 (c)).

⁶⁵ Convention on the Rights of the Child, 20 Nov. 1989 (entry into force: 2 Sept. 1990), *UNTS*, Vol. 1577, p. 3 (ratified by Israel on 3 Oct. 1991), Art. 24 (2) (c) (cited e.g. in Written Statement of Palestine, Vol. I, para. 2.10 and Written Statement of the Maldives, para. 40 (a)).

⁶⁶ CERD, *UNTS*, Vol. 660, p. 195. See Art. 5 (e).

⁶⁷ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 10 Sept. 2013, UN doc. A/68/376, para. 76 (cited in Written Statement of Palestine, Vol. I, fn. 759); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 14 July 2018, UN doc. A/HRC/37/75, para. 27 (cited in Written Statement of Palestine, Vol. I, fn. 755); International Commission of Jurists, “The Road to Annexation – Israel’s Manoeuvres to Change the Status of the Occupied Palestinian Territories: A Briefing Paper”, Nov. 2019, p. 14, available at <https://tinyurl.com/5n82b9xk>, cited in Written Statement of Palestine, Vol. I, fn. 756); Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 Sept. 2022, UN doc. A/77/328, para. 70, cited in Written Statement of Palestine, Vol. I, fn. 757; Report of the United Nations High Commissioner for Human Rights, Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, 15 Oct. 2021, UN doc. A/HRC/48/43, cited in Written Statement of Palestine, Vol. I, fn. 761.

⁶⁸ Concluding observations on the combined seventeenth to nineteenth reports of Israel, adopted on 12 Dec. 2019, UN doc. CERD/C/ISR/CO/17-19 (2020), 27 Jan. 2020, para. 22.

⁶⁹ Human Rights Watch, “Israel’s Unlawful Blockade of Gaza Sparks Women’s Rights Crisis”, 24 Oct. 2023 available at <https://www.hrw.org/news/2023/10/24/israels-unlawful-blockade-gaza-sparks-womens-rights-crisis>.

30. Israel's policy and practices relating to water are but one among many examples of systematic discrimination which have been detailed by other States in these proceedings⁷⁰.

31. The Maldives joins the plethora of other States⁷¹ in confirming before this Court that the régime which Israel has established throughout the occupied territory constitutes apartheid, pursuant to the customary international law definition as reflected in Article II of the Apartheid Convention⁷².

32. Mr President, Members of the Court, at a human level, Israel's policies and practices with regard to water resources are inexcusably intensifying the hardship being endured by the Palestinian people and exemplify the illegality which has characterized Israel's occupation. The final speech for the Maldives will address how the Court should answer the questions posed by the General Assembly in light of Israel's breaches of international law.

33. Mr President, I thank you for your kind attention, and I invite you to call Dr Hart to the Bar.

The PRESIDENT: I thank Ms Sander. I now give the floor to Ms Naomi Hart. You have the floor, Madam.

Ms HART:

1. Mr President, Members of the Court, against the backdrop of Palestinians' extraordinary human suffering, cast in vivid relief this past week, the Court's function is to provide advice to the General Assembly on the two legal questions posed to it. It is my honour, on behalf of the Maldives, and as the final speaker in these proceedings, to provide succinct, direct responses to those two questions.

⁷⁰ See e.g. CR 2024/4, Palestine (Negm), pp. 76-85; CR 2024/5, South Africa (Madonsela), p. 12, paras. 9-16, (Stemmet), p. 18, para. 17; CR 2024/5, Saudi Arabia (Atiyah), p. 38, para. 28; CR 2024/6, Belize (Webb), p. 14, para. 7; CR 2024/6, Bolivia (Sarmiento), p. 28, para. 18; CR 2024/6, Brazil (De Tusco), p. 35, para. 13; CR 2024/7, Egypt (Moussa), p. 36, para. 46; CR 2024/9, Jordan (Wood), p. 63, para. 17; CR 2024/10, Kuwait (Al-Banai), p. 15, para. 11; CR 2024/11, Qatar (Al-Qahtani), p. 55, para. 22; CR 2024/12, Syria (Al Arsan), p. 60, paras. 29-30. See also Written Statement of Jordan, paras. 4.111-4.137; Written Statement of Belize, paras. 54-56; and the Written Statement of the Maldives, para. 37.

⁷¹ See e.g. Written Statement of Palestine, Vol. II, para. 4.37-4.50; CR 2024/4 Palestine (Malki) p. 54 para. 20 and (Negm) p. 80 para. 23; Written Statement of Qatar, Vol. II, para. 3.14; CR 2024/11, Qatar (Al-Qahtani) p. 64, fn. 195.

⁷² International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 Nov. 1973 (entered into force 18 July 1976), *UNTS*, Vol. 1015, p. 243.

I. THE FIRST QUESTION POSED TO THE COURT

2. Question (a) asks the Court to opine on the legal consequences of Israel's ongoing violation of the Palestinian people's right to self-determination, its prolonged occupation, settlement and annexation of the Occupied Palestinian Territory, and its discriminatory legislation and measures.

3. The States appearing before you have been largely consistent on this question⁷³. And that is unsurprising because the relevant principles are well established in the customary international law rules on State responsibility and the Court's jurisprudence.

4. First, Israel is obliged to cease its continuing unlawful acts. This includes, of course, an obligation to terminate its occupation, just as South Africa was obliged to withdraw from Namibia where its presence was illegal⁷⁴. The Court there specifically stated that withdrawal must occur "immediately"⁷⁵. Here, the General Assembly has recently stressed "the urgency of achieving without delay an end to the Israeli occupation"⁷⁶.

5. But that is not all. Israel must also cease the discrete unlawful practices which have characterized its occupation. For example, it must dismantle the discriminatory régime concerning water resources referred to in Ms Sander's speech, in precisely the same way as the Court previously stated that Israel must dismantle both the wall and the associated legislative and regulatory régime which entrenched discrimination⁷⁷.

6. Secondly, at the same time as terminating its unlawful acts, Israel must provide assurances that it will not repeat them.

⁷³ See e.g. CR 2024/4, Palestine, p. 75, para. 42 (Reichler), pp. 101-107, paras. 16-27 (Pellet); CR 2024/5, South Africa, pp. 19-20, paras. 20-25 (Stemmet); CR 2024/5, Algeria, p. 29, paras. 50-53 (Laraba); CR 2024/5, Saudi Arabia, p. 40, paras. 33-35 (Al Atiyah); CR 2024/5, Netherlands, pp. 51-52, paras. 46-51 (Lefebber); CR 2024/5, Bangladesh, p. 58, paras. 27-32 (Hamidullah); CR 2024/5, Belgium, pp. 68-70, paras. 16-26 (Koutroulis); CR 2024/6, Belize, p. 17, para. 16 (Webb), pp. 22-24, paras. 29-37 (Juratowitch); CR 2024/6, Brazil, pp. 36-37, paras. 16-21 (De Tusco); CR 2024/6, Chile, p. 46, para. 26 (Fuentes Torrijo); CR 2024/7, Colombia, pp. 16-17, paras. 32-37 (Jiménez Herrera); CR 2024/7, Egypt, p. 37, para. 55 (Moussa); CR 2024/7, United Arab Emirates, pp. 46-48, para. 46-55 (Nusseibeh); CR 2024/8, France, pp. 24-27, paras. 54-70 (Colas); CR 2024/8, Russia, pp. 13-14, paras. 24-26 (Tarabrin); CR 2024/8, The Gambia, p. 34, para. 36 (Jallow); CR 2024/9, Iran, pp. 25-27, paras. 34-38 (Najafi); CR 2024/9, Iraq, p. 33, para. 15 (Albarrak); CR 2024/9, Ireland, pp. 42-44, paras. 30-37 (Fanning); CR 2024/10, Kuwait, pp. 19-20, paras. 10-13 (Al-Nasser); CR 2024/10, Lebanon, pp. 27-30, paras. 31-41 (Issa); CR 2024/10, Libya, pp. 35-37, paras. 26-34 (El Gehani), pp. 37-38, paras. 2-3 (Algheitta); CR 2024/10, Luxembourg, pp. 47-49, paras. 34-44 (Germeaux); CR 2024/10, Malaysia, pp. 59-60, paras. 31-35 (Hasan); CR 2024/10, Mauritius, p. 69, para. 9 (Klein); CR 2024/11 pp. 19-20, paras. 36-44 (Okowa); CR 2024/11, Norway, pp. 26-27, paras. 30-34 (Jervell); CR 2024/11, Pakistan, p. 42, para. 25 (Aslam); CR 2024/11, Indonesia, pp. 51, paras. 76-85 (Marsudi); CR 2024/12, Slovenia, pp. 32-36, paras. 11-16 (Müller); CR 2024/12, Syria, pp. 57, 59, 61, 62, paras. 14-16, 23-25, 32-34, 40-42 (Al Arsan); CR 2024/12, Tunisia, pp. 73-75, paras. 19-21 (Laghmani).

⁷⁴ *Namibia* Advisory Opinion, p. 54, para. 118.

⁷⁵ *Ibid.*, p. 58, para. 133 (1).

⁷⁶ UNGA resolution 77/25, UN doc. A/RES/77/25, 6 Dec. 2022, preamble.

⁷⁷ *Wall* Advisory Opinion, p. 198, para. 151.

7. Thirdly, Israel is obliged to provide comprehensive reparations⁷⁸. Restitution is optimal, as far as possible. But you heard from Palestine last Monday that no action by Israel now could ever restore the Palestinian people to the situation which would have existed without its violations⁷⁹. In that case, Israel's reparations must include compensation⁸⁰. And, to the extent that compensation will not fully make good the harms caused, Israel must provide just satisfaction in other forms, such as acknowledging its breaches and providing formal apologies.

8. Fourth, there are obligations on third States. States parties to the Fourth Geneva Convention must search for individuals accused of committing or ordering grave breaches of that instrument, including the rules of occupation, and prosecute or extradite them⁸¹. Further consequences flow from the occupation's unlawful status, and I will deal with those in relation to the second question.

II. THE SECOND QUESTION POSED TO THE COURT

9. In question (b), the General Assembly asked the Court how Israel's policies and practices in the Occupied Palestinian Territory affect the legal status of the occupation, and what legal consequences arise for all States and the United Nations.

10. Ms Sander has addressed the many illegal aspects of Israel's occupation. Each and every one of Israel's unlawful acts engages its responsibility as a State. But what is it that determines the *status* of the occupation? The factors affecting status are those that go beyond illegality in the *conduct* of the arbitration and that make the occupation irremediable, meaning that the occupation is what the Court described in the *Namibia* Opinion as "a situation which is maintained in violation of international law"⁸². In other words, it is those breaches of international law that cannot be cured *within* the occupation, but only by the occupation coming to an end, that render it unlawful as a matter of status.

⁷⁸ *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47.

⁷⁹ CR 2024/4, Palestine, pp. 102-103, para. 18 (Pellet).

⁸⁰ *Wall Advisory Opinion*, pp. 198, paras. 152-153.

⁸¹ Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 Aug. 1949 (entered into force 21 Oct. 1950), *UNTS*, Vol. 75, p. 287, Art. 146.

⁸² *Namibia Advisory Opinion*, p. 56, para. 126.

11. One such matter is the permanence of Israel's occupation — notably the *fait accompli* that this Court warned about in its *Wall* Opinion⁸³. Israel has sought to “create irreversible facts on the ground”⁸⁴. As Ms Sander has highlighted, by installing itself as an interminable presence, Israel has violated the prohibition on acquisition of territory by force. The Court need not decide whether Israel's occupation was unlawful *ab initio*; its wrongfulness can be established even if one looks only at the fact of its prolonged continuation with no end in contemplation⁸⁵. The wrongful permanence of Israel's presence — that breach of a peremptory norm of international law — cannot be corrected for as long as Israel remains in the occupied territory at all. *That* is why it goes to the occupation's status.

12. The same is true when it comes to Israel's breaches of the right to self-determination. For example, that right encompasses an entitlement to territorial integrity⁸⁶. Whether or not the territory is within internationally recognized borders, contrary to what you have been told this afternoon. It is inherent in Israel's ongoing occupation that it dispossesses Palestinians of their territory and that it divides the territory: recall the “fragmented archipelago” that Ms Sander referred to⁸⁷. Israel's presence and the Palestinian people's right to territorial integrity are mutually exclusive. And again, this is determinative of the occupation's status.

13. What are the legal consequences of this analysis? For Israel, they include those I have already addressed in relation to question (a), starting with a duty immediately to terminate the occupation in its entirety. Given the occupation's unlawful status, Israel simply cannot achieve compliance with international law as long as it remains in occupation. As well, Israel's ongoing

⁸³ *Wall* Advisory Opinion, p. 184, para. 121.

⁸⁴ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN doc. A/77/328, 14 Sept. 2022, para. 75.

⁸⁵ Written Comments of Jordan, para. 79; CR 2024/6, Belize, p. 18, para. 10 (Juratowitch); CR 2024/7, Egypt, p. 33, para. 34 (Moussa); CR 2024/8, The Gambia, p. 33, para. 31 (Jallow); CR 2024/9, Ireland, p. 40, paras. 23-24 (Fanning); CR 2024/9, Japan, p. 53, para. 22 (Akande).

⁸⁶ *Wall* Advisory Opinion, p. 171, para. 87; UNGA resolution 1514 (XV), UN doc. A/RES/1514(XV), 14 Dec. 1960, para. 6.

⁸⁷ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN doc. A/HRC/47/57, 29 July 2021, para. 63 (also cited at CR 2024/4, Palestine, p. 69, para. 21 (Reichler)).

presence cannot produce any effects as a matter of international law⁸⁸, and in particular cannot change the status of any occupied territory.

14. However, as Ms Sander has alluded to, it is *not* a consequence of the occupation's status that Israel can somehow escape obligations concerning the conduct of an occupation⁸⁹. To the contrary, pending its urgent withdrawal, Israel remains bound by rules of international humanitarian law. Those rules apply whenever an occupation exists in fact, lawful or not — and, as the Court has stated, “regardless of the status of the occupied territories”⁹⁰. The same is true of Israel's obligations under international human rights law. Those duties are engaged based on Israel's exercise of jurisdiction⁹¹ — again, a purely factual state of affairs.

15. The conduct of third States and the United Nations is likely to be of critical practical importance in leading Israel to end its unlawful actions. The people of Palestine, like the people of Namibia half a century ago, should be able to “look to the international community for assistance” in realising their rights⁹².

16. In light of Israel's gross and systematic breaches of *jus cogens* norms, third States bear certain negative duties articulated in the Court's previous advisory opinions⁹³. They must not recognize the situation created by Israel's occupation as lawful or lend that occupation any support or assistance⁹⁴. Accordingly, they must avoid acts which could imply such recognition, such as engaging in trade or any “other forms of relationship” with Israel which may “entrench” its position⁹⁵. They also must not enter into or maintain treaty relations in which Israel purports to act on behalf of or concerning that territory, except treaties of a humanitarian character⁹⁶. Third States

⁸⁸ See e.g. UNGA resolution 2625 (XXV), UN doc. A/RES/2625(XXV), 24 Oct. 1970, Annex: “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”, first principle, tenth paragraph. See also *Wall* Advisory Opinion, p. 171, para. 87.

⁸⁹ Cf. Written Statement of France, para. 51; CR 2024/8, p. 20, para. 31 (Colas).

⁹⁰ *Wall* Advisory Opinion, p. 175, para. 95 (citing Fourth Geneva Convention, Art. 47).

⁹¹ See e.g. International Covenant on Civil and Political Rights, 16 December 1966, entered into force 23 March 1976, *UNTS*, Vol. 999, p. 171, Art. 2 (1); *Wall* Advisory Opinion, p. 180, para. 111.

⁹² *Namibia* Advisory Opinion, p. 56, para. 127.

⁹³ See e.g. *Namibia* Advisory Opinion, pp. 53-56, paras. 115, 119, 121-127; *Wall* Advisory Opinion, pp. 199-200, paras. 154-160.

⁹⁴ *Namibia* Advisory Opinion, pp. 53-55, paras. 115, 119, 121.

⁹⁵ *Ibid.*, pp. 55-56, para. 124.

⁹⁶ *Ibid.*, p. 55, paras. 122.

must not send diplomatic or special missions to Israel with a remit extending to the occupied territory, as if that territory were simply part of Israel⁹⁷. A third State which does not uphold these duties may encounter consequences in its own relations with other States. According to the Court in *Namibia*, “no State which enters into relations with South Africa concerning Namibia may expect the United Nations or its Members to recognize the validity or effects of such relationship”⁹⁸. The same applies here.

17. Equally, third States bear certain positive duties: an obligation to co-operate⁹⁹, including through the United Nations¹⁰⁰, to complete Israel’s extraction from the occupied territory; a duty to remove any impediments to the Palestinian people’s exercise of the right to self-determination; and a duty to ensure Israel’s compliance with international humanitarian law¹⁰¹.

18. As for the United Nations, all of its component parts, but especially the General Assembly and the Security Council, should “consider what further action is required to bring to an end the illegal situation”¹⁰². In 2004, the Court urged the United Nations, as a matter of “urgent necessity”, to “redouble its efforts to bring the Israeli-Palestinian conflict . . . to a speedy conclusion”¹⁰³. That urgency has not abated; it has intensified. How the Court advises the General Assembly on this occasion will, it is to be hoped, help to illuminate the path forward for the entire United Nations system.

19. Mr President, distinguished Members of the Court, that concludes the submissions of the Maldives.

The PRESIDENT: I thank the delegation of the Maldives for its presentation.

This presentation concludes the oral statements by all the Participants who have expressed a wish to participate in the present oral proceedings. It also brings to a close the hearings on the request

⁹⁷ *Ibid.*, p. 55, para. 123.

⁹⁸ *Ibid.*, p. 56, para. 126.

⁹⁹ International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, *YILC*, 2001, Vol. II, Part Two, commentary to Article 41, paras. 2, 4.

¹⁰⁰ *Wall* Advisory Opinion, p. 199, para. 156. See also CR 2024/7, pp. 47-48, para. 53 (Nusseibeh).

¹⁰¹ *Wall* Advisory Opinion, pp. 199-200, paras. 154-160.

¹⁰² *Ibid.*, p. 200, para. 160.

¹⁰³ *Ibid.*, p. 200, para. 161.

for advisory opinion submitted by the General Assembly of the United Nations regarding the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. I would like to convey the Court's thanks to all the delegations who have addressed it in the course of these six days, as well as to the Participants in the written proceedings. I would also ask the representatives of all Participants to remain at the disposal of the Court in case it should require any further information or explanations from them.

The Court will now retire for deliberation. The Registrar will in due course inform all the Participants and all Members of the United Nations General Assembly of the date and time when the Court is to render its opinion.

As the Court has no other business before it today, I declare this sitting closed.

The Court rose at 4.30 p.m.
