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CR 2024/5

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Tuesday 20 February 2024, at 10 a.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 mardi 20 février 2024, à 10 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

Present:	President	Salam
	Vice-President	Sebutinde
	Judges	Tomka
		Abraham
		Yusuf
		Xue
		Bhandari
		Iwasawa
		Nolte
		Charlesworth
		Brant
		Gómez Robledo
		Cleveland
		Aurescu
		Tladi
	Registrar	Gautier

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

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Mr Pieter Andreas Stemmet, Acting Chief State Law Adviser (International Law), Department of International Relations and Cooperation,

Mr Cornelius Scholtz, Legal Counsellor, Embassy of the Republic of South Africa in the Kingdom of the Netherlands.

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HE Ms Salima Abdelhak, Ambassador of the People's Democratic Republic of Algeria to the Kingdom of the Netherlands,

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Mr Ahmed Laraba, jurist, member of the International Law Commission,

Ms Maya Sahli Fadel, jurist, former Commissioner of the African Commission on Human and Peoples' Rights,

Ms Amina Bokreta, Minister Counsellor,

Mr Abdelmoumene Senoussaoui, Foreign Affairs Counsellor.

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For the complete list of delegations of all participants, please refer to CR 2024/4.

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Pour consulter la liste complète de toutes les délégations, prière de se reporter au CR 2024/4.

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Ms Ainhoa López Uclés, intern, Permanent Representation of the Kingdom of Belgium to the international institutions in the Kingdom of the Netherlands.

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M[me] Ainhoa López Uclés , stagiaire, représentation permanente du Royaume de Belgique auprès des institutions internationales au Royaume des Pays-Bas.

The PRESIDENT: Please be seated. The sitting is open. La Cour se réunit ce matin pour entendre l'Afrique du Sud, l'Algérie, l'Arabie saoudite, le Royaume des Pays-Bas, le Bangladesh et la Belgique sur les questions soumises à elle par l'Assemblée générale des Nations Unies relatives aux *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est*. Comme je l'ai indiqué hier, chaque délégation disposera de 30 minutes pour son exposé oral et ne devrait pas excéder le temps qui lui est alloué.

We will have a short coffee break of 10 minutes after the first three participating delegations have spoken and then we will proceed to the next three delegations. With that, I shall now give the floor to the delegation of South Africa and invite His Excellency Mr Vusimuzi Madonsela to the podium.

Mr MADONSELA:

1. Mr President, distinguished Members of the Court, it is both an honour and a responsibility of monumental proportions to appear before you today on behalf of the Republic of South Africa, for the second time within 41 days.

2. Mr President, while South Africa's foreign policy has always favoured a two-State solution, the prevailing conditions suggest that, unless such an approach deals with the inequitable offering of land to Palestinians, the dismantling of all the illegal settlements and the right of return for all Palestinian refugees, such a solution may solidly lead to the disenfranchisement of the indigenous people of Palestine, and concretize the prevailing injustices brought about by decades of apartheid settler colonialism. A just solution for all who legally qualify to live in historical Palestine would need to be negotiated with the assistance of the international community. The inordinate delay in achieving a fair and just settlement has resulted in an unending cycle of violence.

3. A clear legal characterisation of the nature of Israel's régime over the Palestinian people can only assist in remedying the ongoing delay in achieving a just settlement. In this regard, on the legal questions placed before the Court by the United Nations General Assembly in resolution 77/247 of 30 December 2022, we wish to make the following submissions.

4. South Africa cannot overstate the significance of this advisory opinion for the Palestinian people, more especially the legal characterization of the situation of occupation and the imposition

of the system of racial oppression and apartheid which have unconscionably been permitted to continue for far too long. The occupation alone has persisted for 56 years. As the United Nations Special Rapporteur on the occupied Palestinian territories, explained in 2022, "[t]he occupation by Israel has been conducted in profound defiance of international law and hundreds of United Nations resolutions, with scant pushback from the international community."[1] Consequently, Mr President, that defiance by Israel has already led to the killing of tens of thousands of Palestinians — including an estimated 30,000 killed in the past four months alone. These are not mere statistics, they are the flesh and blood of the Palestinian people. Therefore, we must ask: when will Israel's decades-long impunity for widespread and systematic human rights violations and violations of peremptory norms of international law end, if not now?

5. Over the past 136 days, the world has watched in horror — daily — the relentless attacks on Gaza. The ferocity and violence of Israel's latest military campaign against Gaza — and its flouting of international law, including an Order of this Court, which was handed down on 26 January 2024 — is the clearest indication that Israel considers itself unrestrained in its actions against Palestinians. Its actions recur with even more depravity and bloodshed — being of such a serious nature as to lead this Court to find them plausibly genocidal.

6. I remind the Court that it is in our recent submissions before it, in the hearings for the indication of provisional measures in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel)*, South Africa underscored how Israel's ongoing acts and omissions in Gaza form part of a continuum of illegal acts perpetrated by it against the Palestinian people since the 1948 Nakba, and since the 1967 occupation. The legality of that occupation is now the subject of this matter before the Court.

7. Mr President, the Palestinian cause is one which resonates strongly with the people of South Africa. That is because the Palestinian struggle evokes mournful memories of our own struggle against apartheid, segregation and oppression. Ours is an experience aptly referred to, by the

[1] Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, UN doc. A/HRC/49/87, 12 Aug. 2022, para. 11.

United Nations Security Council in 1980, as "a crime against the conscience and dignity of mankind" and as being "incompatible with the rights and dignity of man"[2].

8. It is not without a measure of irony that one notes that this painful experience of our past has enabled South Africa to make a significant contribution to the development of international law on apartheid. From this experience a universal legal prohibition of its practice emerged in the form of a peremptory norm and an international crime. The norm against apartheid has become one of the "most cited norms of *jus cogens*"[3].

9. We as South Africans sense, see, hear and feel to our core the inhumane discriminatory policies and practices of the Israeli régime as an even more extreme form of the apartheid that was institutionalized against black people in my country, coincidentally, from the year 1948 — and which lasted until 1994. The late South African cleric, the Most Reverend Archbishop Desmond Tutu wrote the following:

> "Many black South Africans have travelled to the occupied West Bank and have been appalled by Israeli roads built for Jewish settlers that West Bank Palestinians are denied access to, and by Jewish-only colonies built on Palestinian land in violation of international law.
>
> Black South Africans and others around the world have seen the 2010 Human Rights Watch report which 'describes the two-tier system of laws, rules, and services that Israel operates for the two populations in areas in the West Bank under its exclusive control, which provide preferential services, development and benefits for Jewish settlers while imposing harsh conditions on Palestinians.' This, in my book, is apartheid. It is untenable."[4]

10. That was the position already 14 years ago, since 2010. Since then, the situation of the occupied Palestinian population has worsened exponentially, with the reality of apartheid becoming so obviously explicit as to now being recognized, not only by South African and Palestinian victims of apartheid themselves[5], but by the broader international community, including both Israeli and

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[2] UNSC resolution 473 (1980), 13 June 1980, UN doc. S/RES/473 (1980), para. 3.

[3] International Law Commission, *Fourth report on peremptory norms of general international law (*jus cogens*)* by Dire Tladi, Special Rapporteur, 31 Jan. 2019, UN doc. A/CN.4/727, para. 101.

[4] Tutu, D. "Justice requires action to stop subjugation of Palestinians", *Tampa Bay Times* (30 Apr. 2021), https://www.tampabay.com/opinion/columns/justice-requires-action-to-stop-subjugation-of-palestinians/1227722/

[5] Addameer et al., *Israeli Apartheid: Tool of Zionist Settler Colonialism* (29 Nov. 2022), https://www.alhaq.org/cached_uploads/download/2022/12/22/israeli-apartheid-web-final-1-page-view-1671712165.pdf; HSRC Democracy and Governance Programme, Middle East Project, *Occupation, Colonialism, Apartheid?: A re-assessment of Israel's practices in the occupied Palestinian territories under international law* (June 2009), http://sro.sussex.ac.uk/id/eprint/43295/1/Occupation_Colonialism_Apartheid-FullStudy_copy.pdf; State of Palestine, *It is Apartheid: The Reality of Israel's Colonial Occupation of Palestine* (2021), https://www.nad.ps/sites/default/files/20201230.pdf.; Al Mezan, *The Gaza Bantustan: Israeli Apartheid in the Gaza Strip* (2021), https://mezan.org/uploads/upload_center/kLAkShfIAra2.pdf.

international human rights organizations[6]. Moreover, it is clear that Israel's illegal occupation is also being administered in breach of the prohibition of the crime of apartheid. It is indistinguishable from settler-colonialism, which has no place in the twenty-first century. Israeli apartheid must end. Palestine — the last unfulfilled "sacred trust of civilization" for whom the international community bears responsibility[7] — *must* now be fulfilled. The Palestinian people *must* be permitted to exercise their inalienable right to self-determination.

11. Mr President, South Africa bears a special obligation, both to its own people and the international community, to ensure that wherever the egregious and offensive practices of apartheid occur, these must be called out for what they are and brought to an immediate end, and that the perpetrators of such egregious breaches of peremptory norms of international law be held accountable.

12. In the *Construction of a Wall* case, this Court held that:

> "The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law . . . [and that Israel is under an obligation to] dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto".

13. Despite that 19-year-old finding by the Court, today, Palestinians in the West Bank, including many in East Jerusalem, continue to be contained behind a segregating wall. They continue to be subjected to discriminatory land zoning and planning policies; punitive and administrative house demolitions; and violent Israeli army incursions into their villages, towns, cities and refugee camps, including in Area A, which is supposed to be under full Palestinian control.

14. Palestinians continue to be subjected to routine violent Israeli raids on their homes — with thousands of adults and children being subjected to unlawful arbitrary arrests by Israeli soldiers, in the dead of night, and indefinitely renewable internment without trial — known euphemistically as

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[6] CERD Committee, Concluding Observations on the Combined Seventeenth to Nineteenth Reports of Israel, CERD/C/ISR/CO/17-19 (27 Jan. 2020), https://documents-ddsny.un.org/doc/UNDOC/GEN/G20/019/68/PDF/G2001968.pdf?OpenElement, para. 23; General Assembly, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, UN doc. A/HRC/49/87, 12 Aug. 2022, para. 52; Amnesty International, *Israel's Apartheid Against Palestinians A Look Into Decades of Oppression and Domination* (2022), https://www.amnesty.org/en/latest/news/2022/02/israels-apartheid-against-palestinians-a-cruel-system-of-domination-and-acrime-against-humanity/; B'Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid* (12 January 2021), https://www.btselem.org/publications/fulltext/202101_this_is_apartheid.

[7] *Namibia* Advisory Opinion; Committee on the Exercise of the Inalienable Rights of the Palestinian people, *The Legality of the Israeli Occupation, of the Occupied Palestinian Territory, including East Jerusalem* (2023), p. 12, https://www.un.org/unispal/document/ceirpp-legal-study2023/.

"administrative detention"; and a dual legal system pursuant to which Palestinians — including Palestinian children — are tried under military legislation by military judges — often themselves illegal settlers, in Israeli military courts, without basic protection of international humanitarian and human rights law, while Israeli settlers living illegally in the same territory are subject to an entirely different legal régime, and tried in Israeli civilian courts with full access to due process.

15. Separately, Palestinians in Gaza have lived in a sealed-off enclave, fragmented and segregated from the West Bank, and subjected by Israel to regression, sustained closure and siege. Palestinian refugees and exiles in the diaspora are systematically denied their right to return to their homes. Apartheid Israel discriminates against and fragments all Palestinian people to ensure the maintenance of Israeli Jewish domination.

16. South Africa beseeches this Court to examine the institutionalized régime of discriminatory laws, policies and practices applied by Israel alongside the definition of the crime of apartheid, and to find that Israel subjects Palestinians to what constitutes an apartheid régime.

17. The clear legal characterization of the nature of Israel's régime over the Palestinian people can only assist in remedying the ongoing delay in achieving a just settlement; a delay which perpetually conflagrates the cycle of violence.

18. As I speak, and for each of the past 136 days, the world is witnessing in Gaza an assault that is unprecedented, in speed and severity, violating the most basic precepts of the right to life and the survival of a population. The international community's unwillingness to hold Israel accountable for its policies and practices, and its failure to ensure the immediate, unconditional and total withdrawal of Israeli troops, and an immediate end to the Israeli occupation and apartheid in Palestine — including Gaza, the West Bank and East Jerusalem — emboldens Israel to cross a further threshold: namely, to commit the crime of crimes — genocide.

19. Mr President, distinguished Members of the Court, it is now my honour to request you to invite Advocate Andre Stemmet to the Bar to submit South Africa's further observations on the questions referred to the Court by the United Nations General Assembly.

The PRESIDENT: I thank His Excellency, Mr Vusimuzi Madonsela. I now give the floor to Mr Pieter Andreas Stemmet. You have the floor, Sir.

Mr STEMMET:

I. Introduction

1. Mr President, distinguished Members of the Court, it is an honour to appear before this honourable Court today on behalf of the Republic of South Africa.

2. The request for an advisory opinion presents a critical opportunity to clarify and reconfirm the rules and principles of international law applying to the situation of Palestine and the Palestinian people. A clear legal assessment would assist the General Assembly — and the broader international community — to promote peace and justice, a key element of judicial propriety, at a time when a ferocious and unrestrained military assault has been launched by Israel on the Palestinians in Gaza, which this Court has found may plausibly amount to genocide, threatening the very existence of the Palestinian people.

3. In this submission we do not intend to restate South Africa's arguments on why the Court has to assume jurisdiction, as this has been dealt with in some detail in our Written Statement. We will therefore focus on the Palestinian right to self-determination and the violation thereof by Israel, and then we will continue to submit our arguments on the legal consequences for Israel, the United Nations and third States.

II. Violation of the Palestinian right to self-determination by Israel

4. Mr President, Members of the Court, the right to self-determination, also called the Magna Carta of decolonization, is an established and inalienable right and a fundamental principle of international law. The respect for this principle is one of the purposes of the United Nations (Article 1, paragraph 2, of the Charter). It has an *erga omnes* character owed to the international community as a whole, on which the Court has developed a strong and consistent jurisprudence[8]. The inalienable right of the Palestinian people to self-determination and full independence has been recognized by the United Nations in numerous resolutions over the decades, and the most recent General Assembly resolutions of December 2023, once again recognize the right of the Palestinian people to self-determination and the permanent sovereignty of the Palestinian people in the Occupied

[8] *East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29*; Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 438, para. 82.

Palestinian Territory, including East Jerusalem, over their natural resources[9]. Self-determination accrues to a people, and in its most recent Order of 26 January 2024, in the matter of *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel)*, the Court confirmed that the Palestinians constitute a distinct "national, ethnical, racial or religious group"[10].

5. Israel has occupied the Palestinian territory in the West Bank, Gaza and East Jerusalem since the 1967 Arab-Israeli War and annexed East Jerusalem and parts of the West Bank in that same year. It is not disputed that the acquisition of territory by the threat or use of force is illegal, irrespective of whether the territory was acquired through a war of self-defence or of an act of aggression. The occupying Power cannot annex any part of the occupied territory and there is an obligation on States not to recognize such an illegal territorial acquisition.

6. Moreover, that an occupation must also be temporary in nature, was confirmed by the Court in the *Namibia (South West Africa)* case[11], where it held that the end of South Africa's mandate must be self-determination and independence of the people of Namibia. A 56-year occupation is not temporary. Annexation, per definition, cannot be temporary.

7. These principles also apply to Palestine. The Security Council has already in 1967 in resolution 242 expressly emphasized the inadmissibility of the acquisition of territory by war and called for the withdrawal of Israeli armed forces. Furthermore, in the *Construction of a Wall* case, this Court unequivocally held that the ongoing construction of Israeli settlements in the Occupied Palestinian Territory is in breach of international law[12].

8. However, it is clear that Israel has turned the temporary nature of the occupation into a permanent situation, in violation of the Palestinian right to self-determination. It has done this

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[9] UNGA resolution 78/192, The right of the Palestinian people to self-determination, A/RES/78/192 (19 Dec. 2023), https://www.undocs.org/A/RES/78/192. UNGA resolution 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, A/RES/78/170 (19 Dec. 2023), https://undocs.org/A/RES/78/170.

[10] *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. 45.

[11] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*.

[12] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, para. 120.

through its illegal settlement enterprise, which now consists of an estimated 700,000 settlers[13] — an increase of 235 per cent since the Oslo Peace Accords, and of 165 per cent since the *Wall* Opinion[14]. That is notwithstanding that in the *Wall* case, this Court unequivocally held that the ongoing construction of Israeli settlements in the Occupied Palestinian Territory is in breach of international law[15].

9. In that case, the Court found that Israel has taken measures that "severely impeded the exercise by the Palestinian people of their right to self-determination", in breach of that fundamental right[16]. The very disruption of Palestinian territorial integrity resulting from those settlements as well as Israel's formal and *de facto* annexation of parts of the Occupied Palestinian Territory, including East Jerusalem, constitute further violations of that fundamental right. General Assembly resolution 1514 (XV) of 1960 declares in paragraph 6 as follows:

> "Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the Purposes and Principles of the Charter of the United Nations."

10. The Court, in its Advisory Opinion on *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*[17], held that resolution 1514 has the status of customary international law, and hence is binding on all States, including Israel.

11. Mr President, Members of the Court, turning now to the nature of the Israeli administration of the Occupied Palestinian Territory, it is trite law that Israel as the occupying Power is bound by both international humanitarian law and international human rights law in its administration of the Occupied Palestinian Territory.

12. The basic objective of international humanitarian law applicable to occupation is the protection of the population under occupation, including their safety and security, and their public and private property. As the record of the past half century makes clear, Israel as the occupying

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[13] UNCTAD, *Economic costs of the Israeli occupation for the Palestinian people: the welfare cost of the fragmentation of the occupied West Bank* (10 Aug. 2023), https://unctad.org/system/files/official-document/a78d303_en.pdf.

[14] See Peace Now, *West Bank population, Settlements Watch database*, https://peacenow.org.il/en/settlements-watch/settlements-data/population, accessed Feb. 2024; and Peace Now, *Jerusalem population, Settlements Watch database*, https://peacenow.org.il/en/settlements-watch/settlements-data/jerusalem, accessed Feb. 2024.

[15] *Op. cit.*, p. 120.

[16] *Op. cit.*, p. 52, para. 122.

[17] Para. 152, p. 41.

Power is not acting in the best interests of the population under occupation and is not administering the occupied territory in good faith, breaching multiple *jus cogens* norms of international law, including the prohibitions on annexation, self-determination, apartheid and genocide, on which I have focused.

13. In terms of international humanitarian law, the continuing construction and expansion of Israeli settlements in the Occupied Palestinian Territory are in clear violation of Article 49 of the Fourth Geneva Convention, to which Israel is a party and which the Court has found in the *Wall* case to be binding upon Israel[18].

14. In terms of international human rights law, this Court confirmed in the *Wall* case that the protection offered by human rights conventions does not cease in cases of armed conflict, except under specific and very defined derogation principles[19], while it is also established law that the human rights law obligations of a State also apply in situations over which such State has control.

15. Mr President, Members of the Court, Ambassador Madonsela has dealt in some detail with the practices of apartheid perpetrated by Israel against the Palestinian people, including as the occupying Power in the Occupied Palestinian Territory.

16. But at this juncture, it is also appropriate to recall that the Court held in the *Namibia (South West Africa)* case that to establish and enforce distinctions, exclusions, restrictions and limitations exclusively based on the grounds of race, colour, descent or national or ethnic origin constitute a denial of fundamental human rights and is a flagrant violation of the purposes and principles of the United Nations Charter[20].

17. The extent of human rights violations and discriminatory laws and practices by Israel with respect to the Palestinian population is well documented in various reports of the treaty-based and charter-based mechanisms of the United Nations and is recalled in resolutions of the Security Council and the General Assembly. These policies and practices have reached the threshold of apartheid within the meaning ascribed to it in the International Convention on the Suppression and Punishment of the Crime of Apartheid.

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[18] *Construction of a Wall* case, para. 91.

[19] *Ibid.*, para. 136.

[20] Para. 131.

18. While Israel is not a party to the Apartheid Convention, the Fourth Report on peremptory norms of general international law (*jus cogens)* by the International Law Commission's Special Rapporteur found that the Apartheid Convention codified what was already a crime under customary international law, and that this crime has a *jus cogens* character. The prohibition of apartheid and racial discrimination is therefore a peremptory norm of international law and binding on all States, including Israel.

19. Mr President, Members of the Court, Israel's total disdain and disrespect for these principles result in the occupation being inherently and fundamentally illegal in terms of international law, just as South Africa's prolonged presence in Namibia was found by this Court to be illegal.

III. Legal consequences for Israel, the United Nations and third States

20. Mr President, Members of the Court, further to a finding of illegality, the General Assembly also seeks guidance on the wider consequences of such a finding. We now turn to the legal consequences for Israel, the United Nations and third States.

21. The continued occupation by Israel of the Palestinian territory, including East Jerusalem, as well as the aforementioned violation of peremptory norms of international law, are breaches of international obligations constituting internationally wrongful acts attributable to Israel and which invoke the law of State responsibility[21]. The law of State responsibility provides that a State responsible for an internationally wrongful act is under an obligation to cease such act and to make reparation in an adequate form, as confirmed by this Court's predecessor in the *Factory at Chorzów* case[22].

22. In the present case, the aforementioned principles of international law require that Israel must bring an immediate, unconditional and complete end to the occupation in all its manifestations. This means that Israel must immediately cease its illegal settlement activities and all measures aimed at altering the character, status and demographic composition of the occupied Palestinian territories and dismantle illegal structures, including the settlements and the Wall. Furthermore, it must immediately, unconditionally and totally withdraw its occupation forces from the Occupied

[21] Article 3 of the International Law Commission's *Draft Articles on the Responsibility of States for Internationally Wrongful Acts* (2001).

[22] *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 21; p. 27.

Palestinian Territory, dismantle the settler colonial apartheid régime against Palestinian people, rescinding all legislative measures adopted with a view to annex Palestinian land and discriminate against the Palestinian people, allowing for the full restitution of Palestinian property and for the right to self-determination of the Palestinian people to be finally realized.

23. The United Nations, especially the Security Council and General Assembly, must in all their engagements and actions on the issue of Palestine be guided by the imperative of the implementation of the sacrosanct Palestinian right to self-determination. To this end, these organs must use all measures within their powers to bring an immediate end to the unlawful Israeli occupation of the Palestinian Territory, including East Jerusalem.

24. The United Nations should also remain seised of the matter and continuously monitor implementation of any order that the Court may give to end the racial discrimination and apartheid by Israel in the Occupied Palestinian Territory to ensure that the illegal situation is terminated immediately, and to ensure that their resolutions are implemented without delay. Urgent consideration should also be given, in particular, to the re-establishment of the Special Committee on Apartheid, with respect to the Occupied Palestinian Territory that will be seised with this matter.

25. Third States must immediately act with a view to end, through all lawful means and measures, the annexation by Israel of parts of the Occupied Palestinian Territory and East Jerusalem, and refrain from rendering assistance or aid in any form to Israel for the maintenance of the situation. Third States have a positive obligation not to recognize Israel's continued occupation and presence in the Occupied Palestinian Territory as these are breaches of *jus cogens* norms of international law. That obligation — far too long ignored — must now urgently be implemented.

IV. Conclusion

26. Mr President, Members of the Court, the failure of the international community to act decisively to end the illegal occupation and annexation of Palestinian territory and the settler colonialism, apartheid practices and continuous human rights violations perpetrated by Israel against the Palestinian people — as an occupying Power across Gaza and the West Bank, including East Jerusalem — form the broader context and the root causes of Israel's current military onslaught on

Gaza that has already claimed the lives of an estimated 30,000 Palestinian civilians and has resulted in wide-scale destruction and a catastrophic humanitarian situation.

27. Mr President, honourable Members of the Court, it is often said that the right to life is the font from which all other rights flow. The same could be said about the right to self-determination. In the absence of self-determination, it is impossible for a people to realize a plethora of other rights. These advisory proceedings present this honourable Court with the opportunity to assist in bringing about the immediate and unconditional end to the ongoing, unlawful violation of the Palestinian right to self-determination.

28. Mr President, distinguished Members of the Court, this brings to an end the oral submission by South Africa. I wish to thank the Court for your attention. Thank you.

The PRESIDENT: I thank the delegation of South Africa for its presentation. J'invite maintenant la prochaine délégation, l'Algérie, à s'adresser à la Cour et appelle Monsieur le professeur Ahmed Laraba à la barre. Vous avez la parole.

M. LARABA :

EXPOSÉ ORAL DE LA RÉPUBLIQUE ALGÉRIENNE DÉMOCRATIQUE ET POPULAIRE

1. Monsieur le président, Mesdames et Messieurs de la Cour, j'ai l'honneur de présenter l'exposé oral de mon pays, la République algérienne démocratique et populaire, dans le cadre de la procédure consultative relative à la requête de l'Assemblée générale des Nations Unies du 30 décembre 2022.

2. Je vais le faire sous le bénéfice des quelques remarques suivantes.

3. Les deux questions posées par l'Assemblée générale ont successivement trait aux « conséquences juridiques de la violation persistante par Israël du droit du peuple palestinien à l'autodétermination, de son occupation, de sa colonisation et de son annexion prolongées » et à l'« incidence [que] les politiques et pratiques d'Israël … ont[] sur le statut juridique de l'occupation et [sur] les conséquences juridiques qui en découlent pour tous les États et l'Organisation des Nations Unies ».

4. Le mot clé de la résolution de l'Assemblée générale est celui d'occupation. Il est très abondamment cité à la fois dans son préambule et dans son dispositif. En outre, c'est le seul vocable qu'on retrouve dans les deux questions posées par l'Assemblée générale.

5. Une telle importance ne doit pas étonner, car l'occupation prolongée des territoires palestiniens est le point nodal de leur situation, qui s'est très considérablement détériorée sur tous les plans ces derniers mois.

6. C'est la raison pour laquelle l'Algérie évoquera d'abord brièvement l'inexistence de « raisons décisives » pour ne pas répondre à la requête de l'Assemblée générale (I). L'Algérie s'attachera, ensuite, à l'examen des manifestations de l'occupation prolongée des territoires palestiniens et de leur incidence sur son statut juridique (II). Cet examen aboutit au constat de la violation continue, graduelle et paroxystique des règles et principes du droit international soulignés par la résolution de l'Assemblée générale (III) et, enfin, dernier point, les conséquences juridiques pour tous les États et l'Organisation des Nations Unies (IV).

I. L'INEXISTENCE DE « RAISONS DÉCISIVES »

7. Sur l'inexistence de « raisons décisives », en substance, quatre arguments ont été développés. Il s'agit du principe dit du contournement de l'absence de consentement à la juridiction de la Cour (1), de l'existence d'éléments factuels (2), du conflit existant entre cette demande et l'existence d'un cadre de négociations (3) et enfin de l'absence d'objet et de but de la demande (4).

8. L'Algérie rappelle que la Cour les a constamment écartés — et notamment dans ses avis de 2004 et de 2019, pour n'évoquer que deux des plus récents d'entre eux.

1. Il n'y a pas de contournement de l'absence du consentement à la juridiction de la Cour

9. Constamment invoqué dans les procédures consultatives, notamment dans celle relative à l'illicéité de la construction du *Mur* en 2004, cet argument a, tout aussi constamment, été écarté par la Cour.

10. Ainsi que la haute juridiction l'a, à maintes reprises, déclaré, l'hypothèse de l'existence d'un différend bilatéral concomitant à une procédure consultative est dans la nature des choses.

11. En l'espèce, on chercherait en vain de nouvelles raisons qui pourraient justifier juridiquement la réitération de cet argument.

2. La question factuelle

12. Cet argument fait également partie des classiques régulièrement avancés pour inviter la Cour à refuser de donner suite à une demande d'avis consultatif.

13. La Cour s'y est toujours refusée. C'est ainsi qu'elle a notamment déclaré au paragraphe 58 de son avis de 2004 que « [l]a circonstance que d'autres pourraient évaluer et interpréter ces faits de manière subjective ou politique ne saurait … constituer un motif pour qu'une cour de justice s'abstienne d'assumer sa tâche judiciaire ».

3. Sur l'argument relatif à l'existence d'un cadre de négociation

14. Autre grand classique en la matière, l'existence d'un cadre de négociation mis en place par les accords d'Oslo a de nouveau été avancée pour inviter la Cour à ne pas donner suite à la demande de l'Assemblée générale.

15. La Cour a nettement pris position dans le paragraphe 53 de son avis de 2004, en déclarant que les participants à la procédure ont exprimé à cet égard des vues divergentes et la Cour « ne saurait considérer ce facteur comme une raison décisive de refuser d'exercer sa compétence ».

4. Sur l'absence d'objet et de but de la demande de l'Assemblée générale

16. Cette thèse — celle de l'absence d'objet et de but — n'est pas nouvelle non plus. Ici aussi, la Cour ne devrait pas y donner suite. On peut notamment se reporter au paragraphe 60 de son avis consultatif de 2004 où la Cour l'a écartée en déclarant que, « [c]omme il ressort de la jurisprudence de la Cour, les avis consultatifs servent à fournir aux organes qui les sollicitent les éléments de caractère juridique qui leur sont nécessaires dans le cadre de leurs activités ». Elle a rajouté au paragraphe 62 qu'elle « ne saurait refuser de répondre à la question posée au motif que son avis ne serait d'aucune utilité. La Cour ne peut substituer sa propre appréciation de l'utilité de l'avis demandé à celle de l'organe qui le sollicite, en l'occurrence l'Assemblée générale. »

II. LES MANIFESTATIONS ET LES CONSÉQUENCES DE L'OCCUPATION PROLONGÉE DES TERRITOIRES PALESTINIENS

1. Observations sur l'occupation des territoires palestiniens

17. Notion ambiguë par excellence, car se situant en théorie à un stade intermédiaire entre la guerre et la paix, la notion d'occupation trouve son fondement dans l'article 42 du Règlement de La Haye de 1907 dont le caractère coutumier n'est pas contesté, ainsi que le rappelle la Cour au paragraphe 89 de son avis sur l'*Édification du mur*. Sans s'appesantir sur le régime juridique de l'occupation, il importe de mettre en évidence, sans doute à grands traits, ses traits les plus fondamentaux.

18. En substance, l'occupation a été originellement conçue, dans un contexte, qu'il faut souligner, dans lequel n'existait pas encore le principe de l'interdiction du recours à la force. Elle était donc conçue comme un régime temporaire dans lequel la puissance occupante, on le sait bien, n'exerce pas sa souveraineté. On peut, en outre, souligner qu'elle a été pensée pour gérer des situations transitoires entre la fin des hostilités et la conclusion de traités de paix. Elle suggérerait presque une relation apaisée entre occupant et occupé à propos de laquelle l'idée d'occupation prolongée relevait de l'impensé des rédacteurs d'alors. C'est la raison pour laquelle le droit de l'occupation n'aborde ni la question de son prolongement ni *a fortiori* celle de sa permanence.

19. La multiplication des conflits armés a entraîné de nouvelles formes d'occupation. Les réalités sont bien plus complexes et les États, la doctrine contemporaine, comme le CICR s'interrogent régulièrement sur certaines inaptitudes de ce droit des années 1907 et 1949.

20. La situation palestinienne est une illustration saisissante du violent contraste qui existe entre les apparences théoriques — qui viennent d'être esquissées à très grands traits uniquement — et la réalité. L'Algérie considère que la situation créée en 1948, et poursuivie depuis, met crûment à nu le dévoiement, le détournement de la notion d'occupation par Israël dans les territoires palestiniens occupés.

21. L'objectif d'Israël est d'arriver à un point de non-retour afin d'écarter toute hypothèse de création d'un État palestinien. Cet objectif connaît plusieurs déclinaisons décidées en fonction des situations propres à chaque partie du territoire palestinien occupé, c'est-à-dire Jérusalem-Est, la Cisjordanie et la bande de Gaza. Dès lors, l'occupation est en passe de devenir, si elle n'est pas déjà

devenue, un avatar des anciennes techniques juridiques qui ont exprimé, chacune à leur façon, le droit de la puissance.

2. La colonisation de Jérusalem-Est et de la Cisjordanie et la situation dans la bande de Gaza, premier corollaire de l'occupation prolongée

22. Deuxièmement, après ces brèves observations, la colonisation de Jérusalem-Est et de la Cisjordanie et la situation dans la bande de Gaza, premier corollaire de l'occupation prolongée. Dans les trois parties du territoire palestinien, on retrouve la même politique et la même pratique que l'on peut ramasser autour de la formule « le fait contre le droit ».

1) Jérusalem-Est

23. Avec la guerre de 1948, le projet onusien de partage — la fameuse résolution 181 de l'Assemblée générale — a connu son premier coup d'arrêt et, avec elle, les premières manifestations du fait accompli, illustrées par l'occupation immédiate de la partie ouest de Jérusalem par Israël en violation — je le disais il y a un instant — de la résolution 181 et, en même temps, par l'adoption de mesures législatives et administratives, y compris l'expropriation.

24. Après la guerre de 1967, Israël a commencé à y appliquer son droit interne, avec notamment, mais pas exclusivement, deux lois adoptées le même jour, le 27 juin 1967. Cette politique va se renforcer encore plus avec la loi du 30 juillet 1980 qui a fait de Jérusalem la capitale — je cite la formule — « entière et réunifiée » d'Israël. En réalité, elle doit être qualifiée d'annexion *de jure*, j'y reviendrai.

25. La loi du 27 novembre 2000 l'a amendée — la loi de 1980 — dans le but de la consolider encore plus « pour interdire le transfert de toute sorte de pouvoir gouvernemental ». Elle a de nouveau — cette loi de 2000 — été modifiée en 2018 pour en renforcer davantage la portée.

26. Donc, fait accompli d'une part, suivi de la mise sur pied de règles juridiques israéliennes.

2) La Cisjordanie

27. Ici aussi, deux temps successifs. À l'occupation militaire planifiée succède le début de la colonisation.

28. Il s'en est suivi la construction massive de centaines de colonies et le déplacement et le confinement des populations palestiniennes et la démolition de leur construction. Le trait le plus

frappant en Cisjordanie réside dans l'augmentation spectaculaire de l'implantation de colonies de peuplement. C'est ainsi qu'entre 2012 et 2022, on est passé de 520 000 colons à 700 000. Cela peut donner le tournis, le vertige.

29. Et les conséquences ont été de plusieurs ordres. Sur un plan humain, il a fallu faire le vide et tantôt déplacer, tantôt confiner la population palestinienne. Et, dernière atteinte et non la moindre, la construction d'infrastructures et l'exploitation des ressources naturelles.

30. Tous les historiens de la colonisation ont souligné l'importance décisive de la dépossession des terres dans l'installation et l'accélération de la colonisation. Celle de l'Algérie en est un exemple particulièrement saisissant.

3) La situation de la bande de Gaza

31. Le retrait israélien de la bande de Gaza en 2005 a immédiatement été suivi par le blocus et quatre opérations militaires d'envergure, dont la dernière est en cours.

32. Comment s'intéresser au sort de la bande de Gaza sans évoquer la situation actuelle ? Les faits d'abord. En vérité, ils parlent d'eux-mêmes et les images sont éloquentes. *Res ipsa loquitur*.

33. Ensuite, des chiffres dépassés dès le lendemain de leur annonce, près de 30 000 morts et plus du double de blessés ; la destruction de près de la moitié de toutes les infrastructures essentielles s'accompagne de famine, de manque d'eau, bref on est en deçà du minimum vital.

34. La situation à Rafah est la dernière préoccupation de la communauté des États et des organisations internationales. Sa gravité est due au dernier plan israélien de lancer une offensive militaire d'une grande ampleur prenant au piège une population civile, hagarde et ballottée, d'un million quatre cent mille personnes.

35. Au total, une bande de Gaza dévastée pour longtemps. En paraphrasant tragiquement Caton l'ancien, obsédé par Carthage, qui avait pour leitmotiv la formule *Carthago delenda est*, on peut dire aujourd'hui que Gaza *destructum est*.

3. L'annexion, second corollaire de l'occupation prolongée

36. Les conséquences juridiques tirées de l'évolution dramatique de l'occupation prolongée posent la question de la mutation de cette dernière. Cette question n'est pas nouvelle. Elle est évoquée, elle est parfois suggérée, elle est parfois franchement envisagée après chaque guerre,

notamment par Israël. Mais, au-delà de cela, la situation d'occupation prolongée depuis 1967 l'impose inévitablement dans le débat.

37. Dans sa deuxième question, l'Assemblée générale a expressément visé l'incidence des politiques et pratiques israéliennes « sur le statut juridique de l'occupation ».

38. S'agissant de la jurisprudence de la Cour, l'Algérie tient à rappeler que, dans son avis consultatif de 1950 sur le *Statut international du Sud-Ouest africain* et « alors qu'elle s'exprimait de manière générale sur les mandats », la Cour avait souligné que deux principes furent considérés comme étant d'importance primordiale, notamment « celui de … non-annexion » (p. 131).

39. L'Algérie rappelle ensuite le paragraphe 121 de l'avis sur le *Mur* de 2004. La Cour y avait estimé que

> « la construction du mur et le régime qui lui est associé créent sur le terrain un "fait accompli" qui pourrait fort bien devenir permanent, auquel cas, et nonobstant la description officielle qu'Israël donne du mur, la construction de celui-ci équivaudrait à une annexion *de facto* ».

40. Dans cet extrait, la Cour considère d'abord que, à la fois, la construction du mur et son régime juridique sont des faits accomplis. Elle évoque ensuite l'éventualité de leur permanence. Elle conclut, en recourant au conditionnel, que celle-ci — la permanence — transformerait le régime de l'occupation en annexion *de facto*. En d'autres termes, c'est la permanence qui conditionne le passage de l'occupation à l'annexion de fait. Et donc, inévitablement, cela renvoie à la question de la durée, sur laquelle — on l'a évoqué tout à l'heure — le droit international de l'occupation est muet.

41. La notion de permanence doit être appréciée à l'aune du contexte factuel de la situation en 2004, que la Cour n'a pas manqué de préciser. Ainsi, au paragraphe 69 de l'avis, la Cour s'est référée aux « ouvrages construits ou en cours de construction » et a précisé un peu plus loin que « le conseil des ministres israélien a, le 23 juin 2002, approuvé la première phase de construction » (par. 80) et que « la construction du mur s'est accompagnée de la mise sur pied d'un régime administratif nouveau » (par. 85).

42. On peut mieux comprendre la prudence dont est teintée la rédaction du paragraphe 121. En 2004, il était alors encore permis et légitime de s'interroger sur la finition des travaux de construction, eu égard notamment à la date du prononcé de l'avis — 9 juillet 2004 — et d'une éventuelle issue heureuse du processus de négociations.

43. Pareille prudence peut difficilement être encore de mise en 2024, alors que la construction du mur s'est depuis poursuivie et que le régime qui lui est associé a été consolidé. Cette situation est devenue permanente. Il est tout à fait permis, et même légitime, d'affirmer l'annexion *de facto* du mur et de son régime juridique. Tout comme il est permis de s'interroger sur le régime juridique de la Cisjordanie, avec cette importante précision que son occupation prolongée dure depuis 57 ans. En Cisjordanie également, l'occupation prolongée, avec son lot de construction de colonies de peuplement et de destruction, a abouti à une annexion *de facto*.

44. Il est dans la nature des choses, hélas, que les colonisations, les destructions, les constructions ne sont pas destinées à être éphémères. On peut, à cet égard, rappeler les conclusions du rapport de la Commission internationale indépendante chargée par l'Assemblée générale d'enquêter dans le Territoire palestinien occupé du 14 septembre 2022. Elle y avait pointé « les actes assimilables à une annexion ».

III. LES VIOLATIONS CONTINUES, GRADUELLES ET PAROXYSTIQUES DU DROIT INTERNATIONAL PERTINENT, OBSTACLE À LA CRÉATION D'UN ÉTAT PALESTINIEN

45. Trois domaines évidemment à aborder ici rapidement.

1. La violation du droit à l'autodétermination, règle impérative et *erga omnes*

46. Tout d'abord la violation du droit à l'autodétermination, règle impérative *erga omnes*. On aurait pu rappeler les différentes étapes de l'évolution juridique de ce droit — cela a été fait maintes fois dans les exposés écrits, dans les observations écrites et jusqu'à hier dans l'exposé oral de la Palestine.

47. Aussi bien la Charte que notamment les résolutions 1514 (XV) et 1803 (XVII) et la jurisprudence de la Cour avec ses avis successifs sur la Namibie en 1971 et sur le Sahara occidental en 1975 y ont contribué. Et évidemment un apport particulier doit être souligné s'agissant de l'arrêt sur le Timor oriental de 1995, car c'est là que la Cour a considéré que le droit des peuples « est un droit opposable *erga omnes* ».

48. Je ne voudrais pas y insister davantage, sauf à préciser que la Commission du droit international a inscrit le droit à l'autodétermination parmi les règles impératives à la fin de ses travaux consacrés aux règles impératives en 2019.

2. L'occupation prolongée, source des violations illimitées du droit international humanitaire et du droit international des droits de l'homme

49. Les politiques et pratiques israéliennes ont violé les règles les plus fondamentales de ces deux branches du droit international. Il serait vraiment prétentieux de faire croire dans le laps de temps qu'il me reste de donner un large spectre de toutes ces violations. Je pense que l'on peut se reporter là également aux écritures précédentes de l'Algérie, mais également aux écritures de la Palestine, y compris celles de la journée d'hier.

IV. LES CONSÉQUENCES JURIDIQUES

1. Pour Israël

50. Tout d'abord, Israël est dans l'obligation de mettre un terme aux violations du droit international. Israël a le devoir de réparer l'intégralité des préjudices subis par le peuple palestinien et est également contraint d'exécuter toutes les violations commises.

51. Israël a l'obligation de réparer les préjudices causés.

2. Pour tous les autres États

52. Les autres États sont tenus de ne pas reconnaître comme licites les situations créées par ces violations, de ne pas porter assistance à Israël et, là, il y a un certain nombre d'événements récents qui montrent que la question de ne pas porter assistance à Israël commence à prendre corps.

3. Pour l'ONU

53. Pour l'ONU, il s'agit, pour l'Assemblée générale et le Conseil de sécurité, d'essayer de multiplier un certain nombre de décisions.

V. CONCLUSION GÉNÉRALE

54. En conclusion, Monsieur le président, Mesdames et Messieurs de la Cour, l'Algérie est profondément convaincue que l'impunité est la première loi des oppresseurs. Votre fonction est de

leur dire qu'il y a une loi et que celle-ci doit être respectée, que cette loi n'est pas une loi de vengeance, mais de justice.

55. C'est dans cet état d'esprit que l'Algérie réitère les demandes qu'elle a exprimées dans ses écritures antérieures. Je vous remercie, Monsieur le président, Mesdames et Messieurs de la Cour.

Le PRÉSIDENT : Je remercie la délégation de l'Algérie pour son exposé. I invite now the next participating delegation, Saudi Arabia, to address the Court. I call upon His Excellency Mr Ziad Al Atiyah to take the floor.

Mr AL ATIYAH:

I. INTRODUCTION

1. Mr President, Members of the Court, it is a great honour for me to appear before you to present my country's position on a matter of utmost importance for all States and the United Nations.

2. In my remarks today I will expand on a few critical points made in our Written Statement and address, at the outset, one matter that post-dated our submission but which is impossible to ignore when considering the questions before the Court. That matter is, of course, Israel's military aggression against Gaza and its increasing acts of violence directed against the Palestinian population of the West Bank, including East Jerusalem, since October 2023.

3. I believe I speak in consonance with virtually the entire international community in expressing the Kingdom's profound revulsion and condemnation of the horrendous death, destruction and displacements of Palestinian civilians brought about by Israel's illegal and brutal war on Gaza and the notorious increase in Israeli aggression, impunity and international law violations in the West Bank, including East Jerusalem, since October 2023.

4. Israel defends this obscene brutality as the necessary price for defeating Hamas. The Kingdom of Saudi Arabia firmly rejects this twisted logic. Israel's actions in laying waste to the Gaza Strip, killing and maiming tens of thousands of innocent civilians, depriving them of food, water and the basic means of survival while displacing virtually the entire population of 2.3 million people are not justified under any circumstances. Israel's actions have severely dehumanized the Palestinian population, treating them as dispensable objects rather than human beings. These disgraceful acts,

which have brought about formal accusation before this esteemed Court that Israel is committing genocide against the Palestinian population, as well as an Order on provisional measures recognizing the plausibility of those accusations and ordering Israel to comply with its obligations under the Genocide Convention[23], necessarily weigh heavily upon the consideration of the questions before the Court in this proceeding. For if nothing else, they demonstrate all too vividly how the illegality of the Israeli occupation over more than five decades can degenerate into the ugliest of consequences.

5. A final point I wish to highlight at the outset is that of all the written statements submitted before this Court, *not one* State has sought to defend the legality of Israel's policies and practices in the Occupied Palestinian Territory. This is a telling acknowledgement of the international community's unanimous recognition of the illegality which pervades that occupation. Israel itself does not attempt to defend the substance of its policies and practices. As the Court will have observed, its five-page submission does not — no doubt because it cannot — say *anything whatsoever* about the substantive allegations made against it. Instead, it focuses almost entirely on why the request for the advisory opinion, and the questions contained therein, are somehow improper.

6. The only logical conclusion that can be drawn from all of this is that Israel's policies and practices in the Occupied Palestinian Territory are legally indefensible.

II. THE COURT SHOULD EXERCISE ITS JURISDICTION TO RENDER THE REQUESTED ADVISORY OPINION

7. This brings me to the next part of my statement. The Kingdom of Saudi Arabia submits that the Court has jurisdiction to issue the opinion and there are no compelling reasons for it not to do so[24]. To the contrary, given the recent increase in bloodshed and destruction by Israel in the Occupied

[23] *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.*

[24] Statute of the International Court of Justice, Art. 65. See also Written Statement of the Kingdom of Saudi Arabia, 25 July 2023, paras. 14-22.

Palestinian Territory, as well as the dangerous statements made at the highest levels of the Israeli Government[25], we respectfully submit that the Court is under a *duty* to issue its opinion.

8. I will now discuss the arguments advanced by some States that the Court should not issue the opinion for two primary reasons. First, because the opinion *might* prejudice a negotiation process aimed at resolving the Israeli-Palestinian conflict, which those States consider to be ongoing[26]. And second, because the questions posed concern a bilateral dispute between Israel and Palestine. Not only are those arguments misguided, but they have been repeatedly rejected by this esteemed Court under highly analogous circumstances, including in the *Wall* Advisory Opinion[27].

A. The advisory opinion would not prejudice the negotiation process aimed at a resolution of the Israeli-Palestinian conflict

9. The Kingdom regards the first argument as being based on a blatantly false premise and devoid of any legal foundation. Its lack of legal credibility has been addressed by the League of Arab States in its October 2023 Comments[28]. In the interest of time I would respectfully direct the Court's attention to those comments, which we fully endorse. Simply put, the Court's prior practice should prevail in this instance. The practice gives deference to the General Assembly when requesting guidance from the Court on an issue the Assembly considers relevant to its work.

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[25] See e.g. Statement by Yoav Gallant, 9 Oct. 2023, https://www.youtube.com/watch?v=1nxvS9VY-t0 (translation by Emanuel Fabian, "Defense minister announces 'complete siege' of Gaza: No power, food or fuel", *The Times of Israel*, dated 9 Oct. 2023, available at https://www.timesofisrael.com/liveblog-october-9-2023/); address by the Prime Minister of Israel, dated 13 Oct. 2023, https://www.youtube.com/watch?v=T4HXaZ20M6Q (translation by Reuters, "'Only the beginning' says Netanyahu as Israel makes first raids into Gaza", Reuters, dated 13 Oct. 2023, available at https://www.reuters.com/world/middle-east/now-is-time-war-says-israels-military-chief-2023-10-12/); Rageh Omaar, "Israeli president Isaac Herzog says Gazans could have risen up to fight 'evil Hamas'", ITV News, dated 13 Oct. 2023, available at https://www.itv.com/news/2023-10-13/israeli-president-says-gazans-could-have-risen-up-to-fight-hamas; Israel Katz, then Minister of Energy and Infrastructure, current Minister of Foreign Affairs, Member of the Political-Security Cabinet, Member of Knesset, @Israel_katz, Tweet, dated 13 Oct. 2023 at 6:01 pm, available at https://twitter.com/Israel_katz/status/1712876230762967222; Prime Minister's Office in Hebrew, @IsraeliPM_heb, Tweet, dated 3 Nov. 2023 at 11:43 am, available at https://twitter.com/IsraeliPM_heb/status/1720406463972004198; Gili Cohen, Dov Gil-Har, Itay Blumenthal, Sulieman Masvidan, "Minister Amichai Eliyahu: Atomic bomb on Gaza? This is one of the possibilities", Kan, dated 5 Nov. 2023, available at https://www.kan.org.il/content/kan-news/politic/596470/ (translation in "Far-right minister: Nuking Gaza is an option, population should 'go to Ireland or deserts'", *The Times of Israel*, dated 5 Nov. 2023, available at https://www.timesofisrael.com/liveblog_entry/far-right-minister-nuking-gaza-is-an-option-population-should-go-to-ireland-or-deserts/).

[26] See e.g. Written Statement of the United States of America, 25 July 2023, Chap. III, Sec. A; Written Statement of Hungary, 25 July 2023, paras. 11-19.

[27] *Wall* Advisory Opinion, pp. 157-158, paras. 46, 47. See also *Chagos* Advisory Opinion, pp. 117-118, paras. 86-91; *Namibia* Advisory Opinion, p. 24, para. 34; *Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950* (hereinafter "*Interpretation of Peace Treaties* Advisory Opinion"), p. 71.

[28] Written Comments of the League of Arab States, dated 25 October 2023, paras. 48-55.

10. As the following demonstrates, the assumption that a serious negotiation process exists is a fiction that offends reality.

11. In the 2004 *Wall* proceedings, the Kingdom of Saudi Arabia described Israel's *modus operandi* in the Occupied Palestinian Territory since 1967 as "deliberately enhance[ing] its position and chang[ing] the territorial status quo to its benefit"[29]. The Court rightly recognized this reality in its Advisory Opinion, referring to the illegality of Israel's settlement practice in the Occupied Palestinian Territory[30]. The Court also warned "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 *de facto* annexation"[31]. This assessment was prescient, and tragically — but predictably — resulted in no change in Israel's illegal conduct. Nowhere is this seen more clearly than in the number of illegal settlers residing in the Occupied Palestinian Territory, which has grown from roughly 424,000 in 2004[32] to some 700,000 settlers today[33].

12. Since 1967, far from engaging in negotiations, Israel has made it virtually impossible to establish a cohesive Palestinian State. It has done so by annexing more than 2 million dunams of land[34], building more than 279 illegal settlements throughout the West Bank[35], illegally annexing

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[29] *Wall* Advisory Opinion proceedings, CR 2004/2, 23 Feb. 2004, p. 45, para. 12 (Shobokshi).

[30] See *Wall* Advisory Opinion, pp. 183-184, para. 120.

[31] Ibid., p. 184, para. 121.

[32] Foundation for Middle East Peace, Israeli Settler Population 1972-2006 (citing Central Bureau of Statistics, Statistical Abstract of Israel, 1992-2006 and List of Localities, the Populations, and Symbols, 1995-2005. Statistical Yearbook of Jerusalem, Jerusalem Institute for Israel Studies, 1991-2004), available at: https://web.archive.org/web/20081118071827/http://fmep.org/settlement_info/settlement-info-and-tables/stats-data/israeli-settler-population-1972-2006.

[33] See HRC, Report of the United Nations High Commissioner for Human Rights on Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, UN doc. A/HRC/52/76, 15 Mar. 2023, para. 5; UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, UN doc. A/HRC/46/65, 15 Feb. 2021, para. 13; UN General Assembly, *Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People*, UN doc. A/77/35, 1 Sept. 2022, para. 12 (UN Dossier No. 483); Note by the Secretary-General transmitting a report prepared by the Economic and Social Commission for Western Asia, *Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan*, UN doc. A/77/90-E/2022/66, 8 June 2022, para. 36 (UN Dossier No. 147).

[34] HRC, *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. 39.

[35] HRC, *Report of the United Nations High Commissioner for Human Rights on Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, 15 March 2023, UN doc. A/HRC/52/76, para. 5.

East Jerusalem and declaring Jerusalem as its undivided capital[36], confiscating natural resources[37], demolishing Palestinian homes[38], and much more. Those actions are well documented in the many United Nations reports discussed in the Kingdom's Written Statement and I will not dwell on them further, except to make the self-evident point that Israel's actions have clearly aimed at frustrating a negotiated settlement rather than opening the door to such a settlement[39].

13. These policies and practices should be enough to dismantle the illusion that Israel has any intention of engaging in serious efforts towards a negotiated peace. But Israel has also for good measure approached *actual* negotiations with nothing less than impunity and contempt.

14. Mr President, Members of the Court, we say this not as spectators, but as direct participants in efforts towards negotiating a lasting peace spanning decades. That was the case when, more than 20 years ago, the Kingdom of Saudi Arabia proposed the Arab Peace Initiative, which was adopted by the Arab League in 2002 and re-endorsed at the 2007 and 2017 Arab League summits[40]. However, this peace initiative was rejected outright by Israel, with its then-Prime Minister describing it as a "non-starter" because it required Israel to forego occupied territories in exchange for peace[41], a policy that has persisted until today.

15. The reality today has become more discouraging. At the senior levels of the Israeli Government, calls are openly made to forcibly transfer, or ethnically cleanse, Palestinians out of their

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[36] State of Israel Basic Law of 1980, Jerusalem as the Capital of Israel, Art. 1, available at: https://m.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawJerusalem.pdf.

[37] HRC, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN doc. A/HRC/50/21, 9 May 2022, para. 51.

[38] *Ibid.*; UN General Assembly, *Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People*, UN doc. A/77/35, 1 Sept. 2022, para. 13 (UN Dossier No. 483). See also HRC, *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. 62.

[39] Written Statement of the Kingdom of Saudi Arabia, dated 25 July 2023, paras. 42-73, and citations therein.

[40] Arab Peace Initiative, official English translation of the text adopted by the Arab League Summit on 27 March 2002, available at: https://www.kas.de/c/document_library/get_file?uuid=a5dab26d-a2fe-dc66-8910-a13730828279&groupId=268421.

[41] See e.g. "Arabs offer Israelis peace plan", 28 March 2002, available at: http://news.bbc.co.uk/2/hi/middle_east/1898736.stm.

homeland[42], expand settlements even further[43], annex further areas of the West Bank[44], and at all costs to reject the notion of establishing a Palestinian State along the lines of the two-State solution[45]. And while the brutal and genocidal onslaught of Gaza by the Israeli military since October 2023 has led it to become, in the words of the United Nations Under-Secretary-General for Humanitarian Affairs, a "place of death and despair"[46], it should not be forgotten that Israel's aggression has been accompanied by unyielding statements by its leaders that it will never agree to a sovereign Palestinian State or cede control over the Occupied Palestinian Territory. Such statements hardly reflect Israel's intention to engage in genuine peace negotiations.

16. Concluding on this point, I would add that if serious negotiations aimed at achieving a just resolution of the Israeli-Palestinian dispute in accordance with international law were to become a reality, the Court's opinion could not in any case possibly prejudice those discussions, but rather would enlighten them.

B. The questions before the Court concern matters of capital significance to all States and the United Nations

17. Mr President, Members of the Court, the second argument raised by certain States is that the Court should refrain from rendering the requested opinion because it relates to a strictly bilateral matter between Israel and Palestine[47]. This argument has been rejected by the Court in several prior

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[42] See e.g. Giora Eiland, "A new turning point in the history of the State of Israel. Most people don't understand that", Fathom, 7 Oct. 2023, available at: https://fathomjournal.org/opinion-a-new-turning-point-in-the-history-of-the-state-of-israel-most-people-dont-understand-that/; Gili Cohen, Dov Gil-Har, Itay Blumenthal, Sulieman Masvidan, "Minister Amichai Eliyahu: Atomic bomb on Gaza? This is one of the possibilities", Kan, 5 Nov. 2023, available at: https://www.kan.org.il/content/kan-news/politic/596470/ (translation in "Far-right minister: Nuking Gaza is an option, population should 'go to Ireland or deserts'", *The Times of Israel*, 5 Nov. 2023, available at: https://www.timesofisrael.com/liveblog_entry/far-right-minister-nuking-gaza-is-an-option-population-should-go-to-ireland-or-deserts/).

[43] See e.g. "Far-right minister calls for Israel to 'fully occupy' Gaza, reestablish settlements", *The Times of Israel*, 15 Dec. 2023, available at: https://www.timesofisrael.com/far-right-minister-calls-for-israel-to-fully-occupy-gaza-reestablish-settlements/.

[44] *Ibid.*

[45] See e.g. "'Absolutely not': Israeli ambassador to UK rejects two-state solution", *The Jerusalem Post*, 13 Dec. 2023, available at: https://www.jpost.com/middle-east/article-777902.

[46] UN Office for the Coordination of Humanitarian Affairs, "UN relief chief: The war in Gaza must end", Statement by Martin Griffiths, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, 5 Jan. 2024, available at: https://www.unocha.org/news/un-relief-chief-war-gaza-must-end.

[47] See e.g. Israel's Written Statement, 24 July 2023, pp. 3-4; United Kingdom's Written Statement, 20 July 2023, paras. 3, 5, 8-9, United States of America's Written Statement, 25 July 2023, Chap. II.

contexts, including in the *Wall* Advisory Opinion[48], and should, we believe, be disposed of by the Court in the same manner in this case.

18. Not only is the argument legally unfounded[49], but the fact that the questions posed to the Court are of a multilateral nature is self-evident. As explained in the Kingdom's Written Statement, the legal questions are located in a broader context, involve *erga omnes* obligations and *jus cogens* norms, and ask about the consequences of Israel's policies and practices on *all* States as well as the United Nations[50].

19. To conclude on the question of the Court's jurisdiction, I leave you with one thought that the Kingdom also voiced in the context of the *Wall* Advisory Opinion[51]. If this Court, the principal judicial organ of the United Nations, should not consider the critical questions put before it, then we cannot but conclude that the system to maintain international peace and security set up following the atrocities of World War II has not stood the test of time.

III. THE COURT SHOULD CLEARLY STATE THE LEGAL CONSEQUENCES THAT ARISE FROM ISRAEL'S PROLONGED OCCUPATION AND ILLEGAL POLICIES AND PRACTICES IN THE OCCUPIED PALESTINIAN TERRITORY, HOW THEY AFFECT THE LEGAL STATUS OF THE OCCUPATION AND THE LEGAL CONSEQUENCES FOR ALL STATES AND THE UNITED NATIONS

20. Mr President, Members of the Court, I will now address the first question before the Court, which concerns the legal consequences arising from Israel's prolonged occupation and illegal policies and practices in the Occupied Palestinian Territory[52].

21. To answer this question, the Court has a plethora of evidence available. This includes the evidence furnished by the United Nations, its organs, United Nations human rights mandate holders

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[48] *Wall* Advisory Opinion, pp. 157-158, paras. 46, 47. See also *Chagos* Advisory Opinion, pp. 117-118, paras. 86-91; *Interpretation of Peace Treaties* Advisory Opinion, p. 71.

[49] Kingdom of Saudi Arabia's Written Statement, 25 July 2023, paras. 16-20.

[50] *Ibid.*, paras. 19, 79-84.

[51] *Wall* Advisory Opinion, CR 2004/2, 23 Feb. 2004, p. 45, para. 13 (Shobokshi).

[52] UNGA resolution 77/247 (2022) (UN Dossier No. 3), para. 18.

and specialized agencies, special rapporteurs and the Independent Commission, all available in the dossier before this Court or referred to in the Kingdom's Written Statement[53].

22. We submit that the catastrophic consequences of Israel's policies and practices on the ground, as well as their sheer illegality, are undeniable. The international community has seen stark evidence of these consequences during the current war in Gaza. The ongoing situation is so appalling that last December the United Nations General Assembly overwhelmingly passed a resolution *demanding* an immediate humanitarian ceasefire in Gaza[54], while the Court has recognized the plausibility that Israel's conduct amounts to genocide and ordered it to comply with a series of provisional measures[55].

23. However, as we speak, Israel continues to defy the international community's call for a ceasefire and to wilfully ignore the provisional measures ordered by the Court. More generally, Israel has over the decades of its occupation persisted in its egregious violations of its most fundamental international law obligations. As explained in our Written Statement, Israel is in continuous breach of several *jus cogens* norms, notwithstanding multiple Security Council and General Assembly resolutions condemning its conduct and this Court's findings in the *Wall* Advisory Opinion[56].

24. These violations include Israel taking continuous measures to prevent the Palestinian people from exercising their right of self-determination through various policies and practices, including, among others, the illegal settlement practice in the Occupied Palestinian Territory, the expulsion of Palestinians from their homes and theft of Palestinian property, the denial of sovereignty

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[53] See e.g. HRC, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN doc. A/HRC/50/21, 9 May 2022; HRC, 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; HRC, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN doc. A/HRC/53/22, 9 May 2023; UNGA resolution 3236 (XXIX) (1974), paras. 1-3 (UN Dossier No. 382); UNGA resolution 58/163 (2003), para. 1 (UN Dossier No. 362); UNGA resolution 77/247 (2022), para. 6 (UN Dossier No. 3); HRC resolution 49/28, UN doc. A/HRC/RES/49/28, 1 Apr. 2022, paras. 1, 3, 5-6; UNSC resolution 446 (1979), para. 1 (UN Dossier No. 1262); UNSC resolution 478 (1980), para. 3 (UN Dossier No. 1274), UNSC resolution 2334 (2016), paras. 1-4, 7 (UN Dossier No. 1372).

[54] Emergency Special Session of the United Nations General Assembly, Resolution on the Protection of Civilians and Upholding Legal and Humanitarian Obligations, 12 Dec. 2023, paras. 1-3, available at: https://news.un.org/en/story/2023/12/1144717.

[55] *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*.

[56] See Kingdom of Saudi Arabia's Written Statement, 25 July 2023, paras. 25-26, and citations therein; *Wall* Advisory Opinion, pp. 182-194, 199, paras. 118-137, 155.

over their natural resources, and the breach of their civil, political, economic, social and cultural rights[57].

25. Moreover, Israel has continued implementing its infamous settlement practice in the Occupied Palestinian Territory despite the repeated condemnation of this practice by the Security Council and this Court's determination of their illegality in the *Wall* Advisory Opinion[58]. Yet Israel makes no secret of its intention to maintain and expand settlements, as well as its possession of all or part of the Occupied Palestinian Territory, in violation of the Fourth Geneva Convention and the prohibition on the acquisition of territory by the use of force.

26. Israel's 2018 Basic Law also shows Israel's disdain for the Palestinian people's right to self-determination by declaring the Holy City of Jerusalem "complete and united" as Israel's capital. Stipulating that "[t]he exercise of the right to national self-determination in the State of Israel is unique to the Jewish People" is also incompatible with the Palestinian people's right to self-determination in the Occupied Palestinian Territory, including East Jerusalem[59].

27. The international community has spoken on these issues on many occasions through the United Nations principal bodies, demanding that Israel completely ceases all settlement activities, revokes its annexation of East Jerusalem and complies with its international obligations in other respects. The list of resolutions is long. We have addressed many of them in our Written Statement[60]. Israel continues to ignore them.

28. But Israel's breaches of international law do not end there. There can be no serious debate that Israeli policies and practices also amount to racial discrimination and are tantamount to *apartheid*, in grave violation of the Palestinian people's human rights. Israel's seizure of land and resources for Israeli settlers and its discriminatory application of laws and regulations to the detriment of the Palestinian people are merely examples of this egregious conduct. Israel violates the

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[57] Kingdom of Saudi Arabia's Written Statement, 25 July 2023, paras. 42-49, and citations therein.

[58] *Wall* Advisory Opinion, pp. 183-184, para. 120. See also UNSC resolution 2334 (2016), para. 1 (UN Dossier No. 1372); UNSC resolution 465 (1980), paras. 5-7 (UN Dossier No. 1267); UNSC resolution 446 (1979), para. 1 (UN Dossier No. 1262).

[59] See Basic Law: Israel — The Nation State of the Jewish People (2018, amended in 2022), Article 1 *(c)*, available at: https://m.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf.

[60] See e.g. Kingdom of Saudi Arabia's Written Statement, 25 July 2023, para. 26.

human rights of the Palestinian people in multiple other ways and in breach of its conventional obligations, including the rights of women and children.

29. Mr President, Members of the Court, the Kingdom of Saudi Arabia wishes to emphasize that international law obligations, particularly those embodied in the peremptory norms of general international law, are not abstract rules, and are not intended to be. Their violations entail particular legal consequences, but also have real and tangible consequences. The latter include most prominently the denial to human beings of their right to life and dignity, and more widely the creation of threats to peace and stability, with unpredictable consequences. The multiple and grave violations by Israel of its international obligations in the Occupied Palestinian Territory is therefore of undeniable concern not only to those directly affected, but also to the international community as a whole[61].

30. I will now move on to the second question before the Court, regarding the manner in which Israel's conduct affects the legal status of its occupation. The Kingdom respectfully submits that the only conclusion which may be reached from the multiple and grave breaches of international law emanating from its occupation is that Israel's occupation itself is illegal and must be brought to an unconditional end. Any other conclusion would be anomalous and inconsistent with the clearly illegal origin and conduct of the occupation, including the violations of *jus cogens* norms, that Israel has and continues to engage in through its occupation.

31. To be clear, Israel's occupation was, from its commencement in June 1967, an illegal use of force, and it continues to be so. The Kingdom noted this in its submission in the *Wall* Advisory Opinion[62]. The illegal nature of the 56-year occupation has only been aggravated by Israel's numerous other international law violations, including of *jus cogens* norms. Given the illegality surrounding every aspect of Israel's occupation, that occupation is simply indefensible as a matter of international law.

32. For those reasons, we respectfully ask the Court to expressly declare that Israel's occupation of the Palestinian territories is illegal.

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[61] See Written Statement of the Kingdom of Saudi Arabia, 25 July 2023, paras. 19, 79-84.

[62] *Wall* Advisory Opinion proceedings, Written Statement of the Kingdom of Saudi Arabia, dated 30 Jan. 2004, pp. 6-7, para. 11.

33. The Court is also asked to address the legal consequences of Israel's breaches. I will address these briefly. The Kingdom of Saudi Arabia and numerous other States have laid out in their written statements the legal obligations which flow from Israel's breaches[63]. Pursuant to Article 30 of the Articles on State Responsibility[64], and as explained by this Court in the *Wall* Advisory Opinion, Israel must cease its wrongful conduct, resume compliance with its obligations and offer appropriate assurances and guarantees of non-repetition[65]. Articles 31 and 36 also require that Israel makes full reparation for the damage caused over the decades of its illegal occupation[66].

34. As for all other States, Israel's breach of *jus cogens* norms entails that the international community has an obligation not to recognize that illegal conduct. All States must also co-operate to bring Israel's violations of international law to an end, and make sure that they do not render aid or assistance in furtherance of Israel's breaches.

35. The consequences for the United Nations are clear. All United Nations organs must, within their competences, take steps to bring Israel's violations to an end, and they must also refrain from recognizing those violations or giving aid or assistance to maintain the illegal situation. Finally, they must also require the unconditional and immediate end to the occupation itself.

36. Mr President, Members of the Court, thank you for your attention. This concludes the statement of the Kingdom of Saudi Arabia.

The PRESIDENT: I thank the delegation of Saudia Arabia for its presentation. Before I invite the next delegation to make its oral statement, the Court will observe a coffee break for 10 minutes. The sitting is suspended.

The Court adjourned from 11.30 a.m. to 11.45 a.m.

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[63] Written Statement of the Kingdom of Saudi Arabia, 25 July 2023, paras. 75-78. See also e.g. Statement of the State of Palestine, 24 July 2023, Chap. 7, Part A; Written Statement of the State of Kuwait, July 2023, para. 35; Written Statement of the United Arab Emirates, 25 July 2023, Sect. VA; Written Statement of the League of Arab States, 20 July 2023, Part 4, Chap. 19; Written Statement of Ireland, July 2023, para. 48; Written Statement of South Africa, 25 July 2023, paras. 141-146.

[64] International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001), Art. 30.

[65] *Wall* Advisory Opinion, pp. 197-198, paras. 149-151.

[66] International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001), Arts. 31, 36; *Wall* Advisory Opinion, pp. 197-198, paras. 151-153.

The PRESIDENT: Please be seated. The sitting is resumed. I now call upon the delegation of the Netherlands to address the Court and invite Mr René Lefeber to take the floor.

Mr LEFEBER:

ORAL STATEMENT OF THE KINGDOM OF THE NETHERLANDS

I. Introduction

1. Thank you, Mr President. Mr President, distinguished Members of the Court, it is an honour to appear before you today on behalf of the Kingdom of the Netherlands to participate in this hearing on the request for an advisory opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. Let me express my sincere appreciation for this opportunity to speak early in this hearing, as the other the participants have not had an opportunity to comment on our views in writing.

2. The Kingdom would like to begin by underlining that, for the purposes of the present advisory proceedings, it leaves it to the discretion of the Court to satisfy itself that it has advisory jurisdiction and that it may exercise this jurisdiction with respect to the present request, in accordance with Article 65, paragraph 1, of the Statute of the Court and Article 102 of the Rules of Court.

3. The Kingdom would like to emphasize that it considers that "the object of the request before the Court is to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions"[67]. Therefore, the request should be regarded in "a much broader frame of reference than a bilateral dispute"[68]. And it is with such broader frame of reference in mind that the Kingdom seeks to assist the Court in answering the questions contained in the request through the identification of the applicable international law and the presentation of the legal opinion of the Kingdom on the status and interpretation of that law.

4. Mr President, distinguished Members of the Court, the Kingdom would now like to turn to the questions posed in the present request for an advisory opinion.

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[67] *Wall* Advisory Opinion, p. 159, para. 50.

[68] *Ibid.*

II. The right of self-determination of peoples in occupied territory

5. Mr President, according to the Kingdom, the right of self-determination of peoples is a permanent, continuing, universal and inalienable right with a peremptory character[69]. The principle of self-determination of peoples is enshrined in Articles 1 and 55 of the United Nations Charter. It is also contained in several resolutions of the General Assembly with historical importance, such as resolution 1514 which states that "all peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[70]

6. The right of self-determination has been reaffirmed by the General Assembly in resolution 2625, pursuant to which "every State has the duty to refrain from any forcible action which deprives peoples referred to" in that resolution "of their right to self-determination"[71]. In addition, this right is enshrined in Article 1 common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Court has acknowledged self-determination as a right of peoples in the *Namibia* Advisory Opinion[72], the *Western Sahara* Advisory Opinion[73], the *East Timor* case[74], the Advisory Opinion on the *Construction of a Wall*[75] and the Advisory Opinion on the *Separation of the Chagos Archipelago*[76]. In the *East Timor* case, the Court observed that the right of peoples to self-determination is "a right *erga omnes*"[77]. The status of the right of self-determination as a right under customary international law is thus beyond reproach.

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[69] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of the Kingdom of the Netherlands, 27 Feb. 2018, paras. 1.5, 3.9-3.10.

[70] UN doc. A/RES/1514 (XV), 14 Dec. 1960, Declaration on the granting of independence to colonial countries and peoples, Operative para. 2.

[71] UN doc. A/RES/2625 (XXV), 24 Oct. 1970, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Principle V, The principle of equal rights and self-determination of peoples, para. 5.

[72] *Namibia* Advisory Opinion, paras. 52-53.

[73] *Western Sahara* Advisory Opinion, para. 162.

[74] *East Timor (Portugal* v. *Australia)*, *Judgment*, *I.C.J. Reports 1995*, para. 29.

[75] *Wall* Advisory Opinion, para. 88.

[76] *Chagos* Advisory Opinion, paras. 144-162.

[77] *East Timor (Portugal* v. *Australia)*, *Judgment*, *I.C.J. Reports 1995*, para. 29.

7. According to the Kingdom, the right of self-determination is applicable in the colonial and in the post-colonial context[78]. The right is, however, equally applicable to peoples "under foreign or alien occupation", as confirmed by the General Assembly on several occasions, such as in resolution 51/84 and its Millennium Declaration[79].

8. It appears that the right of self-determination is a truly universal and continuing right. It applies to peoples under colonial domination, peoples residing in occupied territory and peoples living in independent States.

9. As a result, a State that occupies territory is under an obligation to respect and promote the right of self-determination of peoples residing in that territory. The obligation to respect and promote the right of self-determination means that, on the one hand, the occupying State shall refrain from measures that impede the exercise of the right of self-determination of the people concerned during the occupation, and, on the other hand, that the occupying State shall take measures aimed at creating the conditions under which the people concerned is able to freely and genuinely express its will in regard of its future political status[80].

10. As the Kingdom has observed earlier, under international law a distinction must be made between situations in which the right of self-determination is "exercised in a manner that preserves international boundaries" — which can be referred to as internal self-determination — "or in a manner that involves a change of international boundaries" — often referred to as external self-determination[81]. In the context of colonial domination or foreign occupation, the right of self-determination can be realized through independence, association or integration.

11. A prolonged occupation obstructs the implementation of the right of external self-determination of a people residing in the occupied territory concerned.

12. In regard of, amongst others, peoples under foreign or alien occupation, the General Assembly reaffirmed in resolution 45/130 "the legitimacy of the struggle of peoples for

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[78] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of the Kingdom of the Netherlands, 27 Feb. 2018, paras. 2.1-2.7.

[79] UN doc. A/RES/51/84, 28 Feb. 1997, preamble, para. 3, and operative para. 1, UN doc. A/RES/55/2, 18 Sept. 2000, Section I, para. 4.

[80] UN doc. A/RES/2625 (XXV), 1970, Principle V; Articles 1 of the 1966 Covenants; *Western Sahara* Advisory Opinion, paras. 55 and 59.

[81] *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*, Written Statement of the Kingdom of the Netherlands, 17 Apr. 2009, para. 3.5.

independence, territorial integrity, national unity and liberation from colonial domination, apartheid and foreign occupation by all available means, including armed struggle"[82].

13. If a struggle by a people for the implementation of its right of self-determination in the context of colonial domination or foreign occupation is accompanied by the use of armed force by such people, this use of armed force must be in accordance with international law.

III. The UN Charter and the law regulating the use of force by States (*jus ad bellum*)

14. Mr President, I will now address the law regulating the use of force, in particular the United Nations Charter and its prohibition on the use of force by States, contained in Article 2, paragraph 4.

15. According to the Kingdom, the prohibition of the use of force is a rule of *jus cogens*[83] that applies *erga omnes*. Indeed, in the Advisory Opinion on the *Construction of a Wall*, the Court confirmed that the principles as to the use of force incorporated in the United Nations Charter reflect customary international law. In 1966, the International Law Commission noted that the law of the United Nations Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule of international law having the character of *jus cogens*[84]. Consequently, the International Law Commission included the prohibition of aggression in its list of rules of *jus cogens*[85].

16. One of the established exceptions to the prohibition on the use of armed force is that of the inherent right of individual or collective self-defence if an armed attack occurs against a State, as codified in Article 51 of the United Nations Charter.

17. The occupation of foreign territory can be legitimate in the exercise of the right of self-defence in response to an armed attack, provided that the use of force is exercised in accordance with the conditions attached to this right.

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[82] UN doc. A/RES/45/130, 14 December 1990. See also UN doc. A/Res/2625 (XXV), 1970, principle V; UN doc. A/RES/2621 (XXV), 1970, para. 2; UN doc. A/RES/3314 (XXIX), 1974, "Definition of Aggression", Article 7.

[83] Request for advice from the Minister of Foreign Affairs to the Advisory Committee on Issues of Public International Law on the legal consequences of a serious breach of a peremptory norm: the international rights and duties of states in relation to a breach of the prohibition of aggression, August 2022.

[84] Paragraph 1 of the commentary to draft Article 50 of the Draft Articles on the Law of Treaties, *Yearbook of the International Law Commission (YILC),* 1966, Vol. II, UN doc. A/6309/Rev.1, Part II, p. 247.

[85] Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries, adopted by the International Law Commission at its sixty-third session, 2022, UN doc. A/77/10, commentary to Conclusion 23, p. 86.

18. The substantive customary conditions are necessity and proportionality, in addition to the procedural condition contained in Article 51 to notify the Security Council of the actions taken in self-defence.

19. In the Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the Court noted, *inter alia*, that proportionality and necessity are "inherent in the very concept of self-defence"[86].

20. If the placement of a territory under the control of an armed force is the result of a military operation in the exercise of the right of self-defence, necessity requires an assessment of whether the occupation, and the continuation thereof, are necessary to repel the armed attack or that alternative courses of action are available. This inherently supposes also a temporal element of immediacy: if the right of self-defence is not exercised relatively promptly, it may imply that the exercise of the right of self-defence was unnecessary[87].

21. Furthermore, with regard to proportionality, the question is whether the occupation, and the continuation thereof, are proportionate in relation to the armed attack, both in qualitative and quantitative terms. If that is not the case, the occupation may be considered to violate the prohibition of the use of force.

22. These conditions to the exercise of the right of self-defence apply as long as there is an occurring or imminent armed attack.

23. Also, in exercising the right of self-defence, the occupying State must fully respect international law, in particular human rights and international humanitarian law.

24. Mr President, it is the view of the Kingdom that the right of self-defence can also be invoked in response to an armed attack by a non-State actor[88]. This is illustrated, for example, by the Security Council's resolutions adopted after 9/11, in which the Security Council reconfirmed the right to self-defence in response to those attacks.

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[86] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, para. 40; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, para. 194.

[87] See, for example, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I),* p. 244, para. 40; *Oil Platforms (Islamic Republic of Iran* v. *United States of America)*, *Judgment*, *I.C.J. Reports 2003*, paras. 76-77*; Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, para. 237.

[88] Government Response of the Kingdom of the Netherlands to Advisory Report No. 23 on Armed Drones by the Advisory Committee on Issues of Public International Law ("CAVV"), 27 Sept. 2013.

25. An occupation which fulfils the requirements of the right of self-defence may be considered as lawful under *jus ad bellum*. An occupation which does not fulfil, or no longer fulfils, these requirements may lose its legal basis and, hence, violate the *jus cogens* prohibition of the use of force.

26. Finally, the Kingdom underscores that occupation is an inherently temporary use of force, because if it were to be permanent, it would qualify as annexation. As the Security Council emphasized in 1967, in its unanimously adopted resolution 242, the acquisition of territory by war is inadmissible[89]. The Court recognized the customary status of the illegality of territorial acquisition resulting from the threat or use of force in the Advisory Opinion on the *Construction of a Wall*[90].

IV. International humanitarian law (*jus in bello*), including the law of occupation

27. Mr President, the Kingdom now turns to international humanitarian law, or *jus in bello*, which regulates situations of armed conflict, including occupation.

28. According to the Court, "a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and 'elementary considerations of humanity'" that they are "to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law"[91]. In the Court's view, "these rules incorporate obligations which are essentially of an *erga omnes* character"[92]. The Kingdom considers these principles, furthermore, to be a peremptory norm of general international law, and would like to refer in this respect to the conclusion of the International Law Commission to include "the basic rules of international humanitarian law" in its list of rules of *jus cogens*[93].

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[89] UN doc. S/RES/242, 22 Nov. 1967.

[90] *Wall* Advisory Opinion, p. 171, para. 87.

[91] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 257, para. 79 (internal citations omitted).

[92] *Wall* Advisory Opinion, p. 199, para. 157.

[93] Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries, adopted by the International Law Commission at its sixty-third session, 2022, UN doc. A/77/10, commentary to Conclusion 23, p. 86.

29. The Kingdom submits that, while international humanitarian law is applicable in situations of occupation, international humanitarian law does not contain rules for determining whether an occupation is lawful or unlawful as such, even if breaches of the rules are serious in nature. Rather, irrespective of its legality, international humanitarian law regulates situations of occupation once such a situation has arisen in fact.

30. As noted by the Court, "under customary international law . . . territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised"[94], as reflected in Article 42 of the Hague Regulations of 1907[95]. As stated before, inherent in occupation is its temporary nature. Under the Hague Regulations, the occupying Power shall be regarded only as administrator and usufructuary[96].

31. After the Second World War, the Fourth Geneva Convention[97] further developed the law of occupation, by significantly enhancing the protection of civilians in situations of occupation. As noted by the Court, the intention of the drafters of the Fourth Geneva Convention was "to protect civilians who find themselves, in whatever way, in the hands of the occupying Power"[98]. Furthermore, "the drafters of the Fourth Geneva Convention sought to guarantee the protection of civilians in time of war, regardless of the status of the occupied territories"[99].

32. Once an occupation has factually occurred, the occupying Power is obliged to act in accordance with the law of occupation. The occupying Power has to respect and protect the civilians in the occupied territory, who are regarded as protected persons[100]. Protected persons are, *inter alia*, entitled, in all circumstances, to respect for their persons and shall at all times be treated humanely. Private property is to be respected. At the same time, such measures of control and security may be

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[94] *Ibid*., para. 78.

[95] Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907.

[96] *Ibid*., Article 55.

[97] Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 Aug. 1949 (hereafter "Fourth Geneva Convention").

[98] *Wall* Advisory Opinion, pp. 174-175, para. 95.

[99] *Ibid.*

[100] Fourth Geneva Convention, Article 4.

taken by the occupying Power in regard to protected persons as may be necessary as a result of the war[101].

33. As noted before, no sovereignty can be established over occupied territory — and occupied territory may not be annexed. In this regard, an important provision under the law of occupation is that the occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies[102]. Under international criminal law, such transfers, directly or indirectly, by the occupying Power, constitute a war crime, as reflected in the Rome Statute of the International Criminal Court[103]. It is also prohibited to deport protected persons from the occupied territory[104].

34. The Kingdom underscores that all High Contracting Parties to the Geneva Conventions are under an obligation to ensure respect for the Geneva Conventions, with reference to Article 1 common to those Conventions[105]. As noted by the Court, "every State party to that Convention, whether or not it is a party to a specific conflict, is under an obligation to ensure that the requirements of the instruments in question are complied with"[106].

V. International human rights law

35. Mr President, in relation to international human rights law, the Kingdom would first note that this body of law continues to be applicable during situations of armed conflict, including occupation. The Court has come to this conclusion in its Advisory Opinions on *Legality of the Threat or Use of Nuclear Weapons* and *Construction of a Wall*[107]. It added in the case concerning *Armed Activities on the Territory of the Congo* that "international human rights instruments are applicable 'in respect of acts done by a State in the exercise of its jurisdiction outside its own territory', particularly in occupied territories"[108].

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[101] *Ibid*., Article 27.

[102] *Ibid*., Article 49.

[103] Rome Statute of the International Criminal Court, 17 July 1998, Article 8.2.b.viii.

[104] *Ibid.*

[105] According to Article 1 common to the Geneva Conventions, "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances".

[106] *Wall* Advisory Opinion, pp. 199-200, para. 158.

[107] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 240, para. 25; *Wall* Advisory Opinion, p. 178, para. 106.

[108] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 243, para. 216.

36. The International Law Commission has equally concluded that human rights treaties continue to apply during armed conflict, in its 2011 *Draft Articles on the Effects of Armed Conflicts on Treaties*[109].

37. It follows that an occupying power, for the purposes of international humanitarian law, is bound to respect, protect and fulfil the human rights of all those within the occupied territory.

38. The obligations owed by States under rules of universally applicable customary international human rights law are of an *erga omnes* character. The Court has confirmed this in the *Barcelona Traction* case, considering that *erga omnes* obligations "derive, for example, in contemporary international law, from . . . the principles and rules concerning the basic rights of the human person"[110]. According to the Court, this includes the prohibitions of genocide, slavery and racial discrimination[111], as well as the prohibition of torture[112].

39. Certain rules of international human rights law can moreover be characterized as peremptory norms of international law. According to the International Law Commission, this includes the prohibition of genocide[113], the prohibition of torture[114], the prohibition of slavery, and the prohibition of racial discrimination and apartheid, as well as the right of self-determination[115].

VI. The legal consequences for all States and international organizations of a serious breach of a peremptory norm (*jus cogens*)

40. Mr President, both questions before the Court concern the legal consequences of ongoing violations of rules of international law. Several of these rules are, as indicated, peremptory norms of

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[109] Adopted by the International Law Commission at its sixty-third session, in 2011, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (UN doc. A/66/10, para. 100); *YILC, 2011*, Vol. II, Part Two, Articles 6-7 and Annex, under *(f)*.

[110] *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 32, para. 34.

[111] *Ibid.*

[112] *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 449, para. 68.

[113] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, *Judgment*, *I.C.J. Reports 2007 (I)*, para. 161.

[114] *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II),* p. 457, para. 99.

[115] Annex under (f) and I, Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), Adopted by the International Law Commission at its seventy-third session, in 2022, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (UN doc. A/77/10, para. 43). The report will appear in *YILC*, 2022, Vol. II, Part Two.

general international law. As we have stated before, all such peremptory norms are applicable *erga omnes*[116]. I will now address the additional legal consequences for all States and international organizations in the event of a "serious breach" of such a peremptory norm, it being noted that these consequences are additional to the regular obligations arising from the commission of an internationally wrongful act.

41. The rules on the legal consequences for States when a serious breach of a peremptory norm occurs are reflected in Articles 40, 41 and 48 of the Articles on the Responsibility of States for Internationally Wrongful Acts[117]. The relevant provisions for States and international organizations may be found in Articles 41, 42 and 49 of the Draft Articles on the Responsibility of International Organizations[118]. According to the Kingdom, these provisions reflect customary international law.

42. These legal consequences may be divided in two categories: substantive consequences[119] and procedural consequences[120]. I will only address the Articles on State Responsibility in my statement. However, it is equally applicable to the Draft Articles on the Responsibility of International Organizations.

43. Article 40 of the Articles on State Responsibility defines a serious breach as "a gross or systematic failure" by the responsible State to fulfil its obligation under a peremptory norm. Article 41 stipulates the particular substantive consequences of such a breach, not only for the responsible State but for the international community as a whole, including that State. In sum, States shall co-operate to bring the serious breach to an end, shall not recognize as lawful a situation created by such breach and shall not render aid or assistance in maintaining the situation. The Court has confirmed the binding nature of the rules reflected in Article 41 in *Jurisdictional Immunities*[121].

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[116] See Written Statement of the Kingdom of the Netherlands with respect to *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, para. 3.2; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, para. 1.5.

[117] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission on the work of its fifty-third session, 23 April-1 June and 2 July-10 August 2001, *Official Records of the General Assembly*, Fifty-sixth session, Supplement No. 10, UN doc. A/56/10 (hereafter "ARSIWA"), Arts. 40 and 41.

[118] Draft Articles on the Responsibility of International Organizations (hereafter "DARIO"), Report of the International Law Commission on the work of its sixty-third session, 26 April-3 June and 4 July-12 August 2001, *Official Records of the General Assembly*, Sixty-sixth session, Supplement No. 10, UN doc. A/66/10, Arts. 41, 42 and 49.

[119] Arts. 40 and 41 of the ARSIWA and Arts.41 and 42 of the DARIO.

[120] Arts.48 of the ARSIWA and Art. 49 of the DARIO.

[121] *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, para. 93.

44. The Court has, on multiple occasions, pronounced on the legal consequences of serious breaches of norms affecting the international community as a whole. In *Barcelona Traction*, the Court established that obligations owed towards the international community as a whole "are the concern of all States" and that "[i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*"[122]. The Court further confirmed these obligations in its Advisory Opinions on *Namibia*, the *Construction of a Wall* and the *Separation of the Chagos Archipelago*.

45. Thus, the jurisprudence of the Court supports the obligations reflected in Article 41 of the Articles on State Responsibility: the Court has also identified the obligation of non-recognition and the prohibition to render aid and assistance, and the obligation to co-operate to bring the consequences of the serious breach of a peremptory norm to an end.

46. As to the specific implementation of these rules, the Kingdom observes the following. First, the obligation to co-operate to bring to an end the consequences of the serious breach of a peremptory norm will in most cases, and particularly in cases concerning self-determination and decolonization, be implemented most effectively through the United Nations[123]. However, should co-operation in the context of the United Nations fail to materialize, or should the United Nations be unable to take appropriate action, States are not relieved from their obligation to co-operate to bring the consequences of the breach to an end. In that case, they are obliged to seek co-operation through regional or bilateral fora.

47. Second, the obligation not to recognize as lawful the situation brought about through the serious breach of a peremptory norm must take into account the exceptions to that rule, as formulated by the Court in the *Namibia* Advisory Opinion.

48. Third, the rendering of unlawful aid and assistance contrary to the prohibition thereto does not give rise to international responsibility of the aiding or assisting State for the underlying situation or internationally wrongful act, but only for its unlawful aid or assistance.

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[122] *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain), Second Phase, Judgment, I.C.J. Reports 1970,* p. 32, para. 33.

[123] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, para. 25; *Wall* Advisory Opinion, para. 160; *Chagos* Advisory Opinion, para. 150.

49. Fourth, the obligation not to render aid or assistance includes an obligation not to undermine measures, including sanctions, taken by other States in their endeavour to bring to an end the serious breach of a peremptory norm, in particular when the State undermining those measures does so knowing that its conduct contributes to the maintenance of the unlawful situation.

50. Finally, it is our view that a serious breach of a peremptory norm entitles States other than the injured State to take a countermeasure against the responsible State, as a legal consequence of that breach. Such resort to countermeasures by a non-injured State must be in accordance with the customary rules on countermeasures, including the conditions of proportionality and reversibility[124].

51. As a final observation, it may be recalled that the Kingdom considers that all peremptory norms are applicable *erga omnes*. Therefore, the procedural legal consequence of a serious breach thereof is that all States, and international organizations, have legal standing to invoke responsibility for such a breach: they may claim cessation of continuing internationally wrongful acts, assurances and guarantees of non-repetition, and performance of the obligation of reparation. A claim concerning reparation is restricted in the sense that it must be in the interest of the injured State, or international organization, or of the beneficiaries of the obligation breached. Such beneficiaries may include individuals and peoples[125].

52. Mr President, this brings me to the end of my statement. We sincerely hope that your advice will contribute to achieving peace in the Middle East. Thank you, Mr President.

The PRESIDENT: I thank the delegation of the Netherlands for its presentation. I invite the next participating delegation, Bangladesh, to address the Court. Let me call upon His Excellency Mr Riaz Hamidullah to take the floor.

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[124] Arts. 51, 49, paras. 2 and 3, and 53, respectively, of the ARSIWA. For the relevant rules in the DARIO, Arts. 51 to 56.

[125] ARSIWA, Commentary to Art. 33, paras. 3 and 4.

Mr HAMIDULLAH:

ORAL STATEMENT OF THE PEOPLES' REPUBLIC OF BANGLADESH

I. INTRODUCTION

1. Mr President, Members of the Court, it is my distinct honour and privilege to address the principal judicial organ of the United Nations, on behalf of the People's Republic of Bangladesh; and participate in these advisory proceedings on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*.

2. Bangladesh fought for 23 long years to gain her independence and finally achieved it through a bloody war in 1971, during which three million people had to sacrifice their lives. In the early days of independent Bangladesh, 1972, our Father of the Nation, Bangabandhu Sheikh Mujibur Rahman, said: "The world is divided in two parts, oppressors and oppressed. And I am with the oppressed." As Bangladesh pursued her own self-determination, our constitution mandated us to support oppressed peoples worldwide who are fighting imperialism, colonialism or racism. This duty is outlined in Article 25 *(c)* of our constitution. In accordance with this duty, Bangladesh is participating in these advisory proceedings to contribute to the realization of the right of the Palestinian people to self-determination. We aim to achieve this by providing this Court with our perspectives on the questions asked by the United Nations General Assembly in the current request for an advisory opinion.

3. Bangladesh has long reiterated the call to end Israel's occupation of Palestine and to achieve a lasting and permanent solution, which entails the establishment of a sovereign and independent Palestinian State along the pre-1967 borders, with East Jerusalem as its capital. We firmly believe that the Court must heed the long overdue call to holistically examine Israel's occupation and render an opinion on the legal status of the occupation as a whole.

4. As we heard in this very hall just last month, Gaza has been described as "a living hell". On 20 May 2021, even before the ongoing war, Mr António Guterres, the United Nations Secretary-General, said, "if there is a hell on earth, it is the lives of children in Gaza". I stand before the Court also in the context of the fast-developing circumstances in Rafah, with grave humanitarian implications for the 1.4 million Palestinian people, nearly half of them children.

5. The ongoing war represents one of the most shameful catastrophes in the history of the modern era. The United Nations agencies and other humanitarian aid organizations on the ground have warned of a "humanitarian disaster" engulfing the tiny enclave of 2.3 million people, with shortages of food, fuel, drinking water and medicines, worsening by the day. The killing of thousands of innocent civilians, particularly children, the destruction of their homes, the occupation of their ancestral lands and the deliberate obstruction of their access to food and water all constitute blatant violations of international law and serve as textbook examples of ethnic cleansing.

6. Bangladesh firmly believes that an advisory opinion on the questions posed by the General Assembly would undoubtedly represent a critical and logical step towards ending the illegal occupation. The dismantling of this occupation would, in turn, address the root cause of Israel's violent subjugation of the Palestinian people.

7. We elaborated on these matters and the underlying reasoning in our submissions before the Court, Mr President, on 24 July and 25 October last year. It is pertinent to recall that, just four months back, the United Nations Special Rapporteur on the situation of human rights in the Occupied Palestinian Territories, Francesca Albanese, in her report, brought up several appalling facts. I would consider it apt to quote one pertinent aspect:

> "[I]n the occupied Palestinian territory, the fundamental right to life is under threat, as indicated by the mortality rates of Palestinian children: the neonatal mortality and infant mortality rates in the occupied Palestinian territory are, respectively, 9.3 and 12.7 per 1,000 live births, rising to 14.8 per 1,000 live births for children under 5, while in Israel they are 1.7, 2.7 and 3.4 per 1,000 live births. In addition to direct attacks on the right to life, Palestinians also endure structural violence and racial discrimination, which impedes their full development."[126]

8. The structural violence of the occupation and the deliberate and excessive use of force against the Palestinians are indeed not limited to the recent events in Gaza. As the Special Rapporteur Ms Albanese stated in her 2023 report:

> "[t]he spectre of death looms as a dominant element in the lives of Palestinian children. This reality exerts a psycho-social toll on those who manage to survive, as poignantly expressed by Ouadia, a 14 year old girl, 'fearing death does not prevent you from dying, but it prevents you from living.'"

9. Thousands of Ouadias keep crying, in silence, deprived and disenfranchized, for decades.

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[126] A/78/545, 20 Oct. 2023.

10. Ending the occupation would necessarily bring an end to the violence that is exercised upon Palestinians on a daily basis. However, there is no end to the occupation in sight, nor is it likely to end through political means alone. It has become interminable. That much was all but confirmed by Israel's Prime Minister, Mr Benjamin Netanyahu, on 18 January 2024. The Court's intervention, to us, is therefore both timely and necessary[127].

11. As I proceed with this oral statement, I wish to address whether the occupation of Palestinian territory by Israel is illegal or not. Even though the great majority of States participating in these proceedings — including Bangladesh — are firmly convinced that the occupation is illegal, we note that two States contend that it is not. Next, I will state the legal consequences that, in our view, derive from the illegal status of the occupation.

II. ON ISRAEL'S ILLEGAL OCCUPATION

12. On Israel's illegal occupation, Mr President, Members of the Court, the fundamental question posed by the United Nations General Assembly regarding the legality of the Israeli occupation is grounded in established international norms and legal principles. The State of Palestine, in its written statement, underscores the colonial and acquisitive nature of the occupation, emphasizing its deleterious impact on the Palestinian people. The occupation, characterized by persecution, racial discrimination and apartheid, stands in clear violation of three peremptory norms of international law: the right to self-determination, the prohibition of acquiring territory by force and the prohibition of racial discrimination and apartheid.

13. Numerous submissions have echoed these sentiments, highlighting the temporary nature of belligerent occupation as mandated by international law. The annexation of occupied territory and the settlement of the occupying Power's nationals in the occupied area are explicitly prohibited, constituting illegal acquisition of territory under the United Nations Charter and relevant United Nations resolutions.

14. Israel's prolonged occupation, coupled with its policies of colonization and annexation, underscores its illegality under international law. These actions not only contravene the

[127] As was widely reported, Netanyahu stated on Thursday 18 Jan. 2024 during a news conference: "In any future arrangement . . . Israel needs security control of all territory west of the Jordan [River]"and "This collides with the idea of sovereignty. What can you do?"

United Nations Charter but also violate general international law, including the peremptory norm prohibiting the acquisition of territory by force.

15. Furthermore, arguments put forth by States and international organizations reject any justification for Israel's occupation on grounds of self-defence. The occupation violates fundamental principles of international law, including the right to self-determination and the prohibition of acquiring territory by force.

16. The Advisory Opinion on *Wall*, which concluded that Israel cannot rely on self-defence to justify its actions, reinforces the notion that the occupation cannot be justified under international law.

17. While the countries supporting Israel in these advisory proceedings have primarily focused on jurisdictional questions, a few States have addressed the merits of the occupation. One contends that an occupation can never be unlawful, regardless of violations of international humanitarian law. However, this argument stands in contravention of established legal principles and has been widely found to be incorrect.

18. Switzerland's distinction between the "law of occupation" and the "legality of an occupation" further elucidates the legal framework surrounding the issue. An occupation that involves annexation or *de facto* control of the occupied territory constitutes an illegal acquisition of territory by force, as prohibited under international law.

19. Ultimately, Israel's occupation, characterized by its acquisitive, colonial and annexationist nature, represents a clear violation of international law. It serves as a means for the illegal acquisition of territory and must be brought to an immediate and unconditional end.

20. I may also recall the United Nations Security Council resolution 2334 of 23 December 2016, which reaffirmed the obligations of Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention[128] in regard to the protection of civilian persons in time of war.

21. That Security Council resolution also condemned all measures aimed at altering the demographic composition, character and status of the Palestinian territory occupied since 1967,

[128] 12 Aug. 1949.

including East Jerusalem, including, *inter alia*, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions. Israel has flagrantly violated this and all other Security Council resolutions and it continues to do so in furtherance of permanently maintaining its illegal occupation of Palestinian territory.

22. At a more granular level, may I refer to the approaches of assessing legality advanced by the former United Nations Special Rapporteur, Michael Lynk, in his 2017 report to the United Nations General Assembly, and the current Special Rapporteur, Francesca Albanese, in her 2022 report. These are apposite and relevant to the Court's task in this case. The two approaches overlap and interrelate, but ultimately provide two pathways for determining the legal status of the occupation.

23. I may humbly request the Court to consider the Lynk report, where he proposed a four-part test for determining the legality, or illegality, of an occupation. The Special Rapporteur's approach also fits within the parameters of the Court's Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia*. That Opinion arose out of a Security Council resolution declaring South Africa's continued presence in Namibia "illegal". If South Africa's mandate could be found to be illegal due to its violation of the applicable international legal principles, so too can Israel's occupation by reason of its violation of the same principles.

24. Therefore, applying one or both of these frameworks, which Bangladesh endorsed for the reasons stated in our written submissions, we would respectfully submit that Israel's occupation is undoubtedly illegal. I will now turn to the legal consequences.

III. ON LEGAL CONSEQUENCES

25. Mr President and Members of the Court, there is a broad consensus that Israel, through its denial of the Palestinian people's right to self-determination, has violated peremptory norms of international law. These violations include persecution, racial discrimination and apartheid against Palestinians, as well as the occupation, colonization and annexation of Palestinian land.

These systematic breaches severely undermine the rights of Palestinians as a people and of Palestine as a State, while also hindering the prospects for a just and lasting peace in accordance with

international law and relevant United Nations resolutions. Consequently, international law mandates the complete, unconditional and immediate cessation of these internationally wrongful acts.

26. All States and international organizations that have condemned Israel's conduct agree that these systematic and grave breaches carry legal consequences for Israel as the responsible State, other States, and the United Nations and other intergovernmental organizations.

Legal consequences for Israel

27. On legal consequences for Israel, *first*, Israel must cease all acts preventing the exercise of the right to self-determination by the Palestinian people, including rescinding discriminatory laws and measures. This cessation includes withdrawing occupation forces, dismantling illegal structures such as settlements and the Wall, and repealing annexation-related legislation.

28. And *second*, Israel must provide reparations for the damages caused and guarantee non-repetition.

Legal consequences of all other States

29. On the legal consequences of all other states: *first*, all States must ensure the immediate cessation of any impediment to the exercise of the Palestinian people's right to self-determination and uphold the prohibition of acquiring territory by force, and of racial discrimination and apartheid.

30. And *second*, States must not recognize the illegal situation resulting from Israel's wrongful acts, including in Jerusalem, and must not provide aid or assistance to maintain this situation. Co-operation is essential to ensure Israel's compliance with international law and humanitarian standards.

Legal consequences for the United Nations

31. On legal consequences for the United Nations: *first*, the General Assembly and the Security Council should consider further action to immediately end the Israeli occupation and remove obstacles to Palestinians' rights, including self-determination.

32. And *second*, immediate action is necessary to end the system of apartheid set up by Israel, with relevant United Nations resolutions implemented without delay.

IV. CONCLUSION

33. Mr President, distinguished Members of the Court, the promise of a Palestinian State based on a diplomatic settlement grounded in law has been a prominent feature of the international agenda since 1948. Seventy-five years later, there exists a vast body of State practice and *opinio juris* that emphatically support the Palestinian people's right to an independent State. The UN Security Council and the General Assembly have adopted numerous resolutions since 1948 on the "Question of Palestine", recognizing, among other rights, the right of return for Palestinian refugees and the right of Palestinians to establish an independent State along the pre-1967 borders. Additionally, both the United Nations General Assembly and the Human Rights Council have acknowledged the Palestinian people's right to self-determination. Importantly, in 2004, this Court, in its Advisory Opinion on the *Wall*, explicitly affirmed the Palestinian people's right to self-determination under international law.

34. Bangladesh, drawing on our agonizing struggle for independence, recognizes how the State of Palestine consistently and conclusively reaffirmed her commitment to a peaceful solution. This solution, in accordance with international law and based on the aforementioned terms of reference, aims to ensure the fulfilment of the Palestinian people's inalienable rights under international law. These rights include self-determination, the right of return, the realization of independence and sovereignty of their State along pre-1967 borders, with East Jerusalem as its capital, and the aspiration to live side by side in peace and security with Israel.

35. The Court's steadfast commitment to universally uphold the rule of law, coupled with its principled stance on the legality of Israel's half-century "temporary" occupation of the Occupied Palestinian Territory, would shine a light of hope on the beleaguered Palestinian people. A decisive determination by the Court of the illegal status of the Israeli occupation of Palestinian territory, and the legal consequences that arise from such status, including an immediate, unconditional and complete end to the occupation, would help secure the identity, respect, dignity and existence for the present and future generations of the Palestinian people, in a State of their own, at peace with Israel.

36. Mr President, Members of the Court, Palestinians are no expandable people. As much as this advisory opinion involves legal questions, it poses exceptional moral issues for the humanity. I stand before the Court as Bangladesh deem it our sacred duty to uphold international law as well. On

behalf of Bangladesh, I would, therefore, respectfully request the Court to give full consideration to the importance of an advisory opinion at this critical moment. I would like to thank you, Mr President, as well as the distinguished Members of the Court, for granting Bangladesh this opportunity to participate. Thank you.

The PRESIDENT: I thank the delegation of Bangladesh for its presentation. J'invite la prochaine délégation, la Belgique, à prendre la parole devant la Cour et appelle à la barre Monsieur Piet Heirbaut. Monsieur, vous avez la parole.

M. HEIRBAUT :

EXPOSÉ ORAL DU ROYAUME DE BELGIQUE

1. Monsieur le président, Honorables Membres de la Cour, c'est un grand honneur pour moi de me présenter devant vous en tant qu'agent du Royaume de Belgique dans cette procédure orale concernant la demande d'avis consultatif qui vous a été soumise par l'Assemblée générale des Nations Unies dans sa résolution du 30 décembre 2022. La Belgique est reconnaissante à la Cour de lui avoir donné l'opportunité d'être entendue dans cette procédure consultative.

2. Eu égard au temps qui lui est imparti, la Belgique limitera son intervention à la question de la colonisation et de ses conséquences juridiques.

3. Comme la Belgique a déjà eu l'occasion de le souligner notamment lors de ses interventions au sein du Conseil de sécurité des Nations Unies[129], c'est une véritable *politique* de colonisation qui est mise en place par Israël en territoire palestinien occupé depuis des décennies. Cette politique se matérialise par une série de mesures connexes, indissociables à l'établissement des colonies elles-mêmes.

4. Avec votre permission, j'aborderai dans un premier temps le cadre juridique général pertinent pour apprécier la question de la colonisation en territoire palestinien occupé (A). Dans un deuxième temps, je m'attarderai sur le caractère illicite de l'établissement des colonies (B). Le professeur Vaios Koutroulis se penchera ensuite sur les règles pertinentes pour apprécier l'illicéité de la politique de la colonisation du territoire palestinien occupé et des mesures connexes adoptées

[129] Voir, à titre d'exemple, les interventions suivantes au sein du Conseil de sécurité des Nations Unies : S/PV.8489, 26 mars 2019, p. 13 ; S/PV.8517, 29 avril 2019, p. 17 ; S/PV.8532, 22 mai 2019, p. 21.

par Israël dans ce cadre (C). Il terminera en exposant brièvement les conséquences juridiques des violations du droit international qui auront été identifiées (D).

A. Cadre juridique général pertinent

5. Monsieur le président, la Belgique commencera son exposé par un bref rappel du cadre juridique pertinent pour apprécier la question de la colonisation.

6. La politique de colonisation d'Israël s'inscrit dans le contexte général de l'occupation prolongée du territoire palestinien. Dans son avis consultatif du 9 juillet 2004 sur les *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé*[130], la Cour a fourni les clarifications suivantes quant au cadre juridique général de l'occupation en question :

— Premièrement, le territoire palestinien contrôlé par Israël depuis 1967, y compris Jérusalem-Est, est un territoire occupé[131].

— Deuxièmement, l'illicéité de l'acquisition de territoire par la force s'applique au territoire palestinien occupé ; cette règle interdit l'annexion du territoire par Israël, y compris une annexion *de facto*[132].

— Troisièmement, l'article 51 de la Charte des Nations Unies est « sans pertinence au cas particulier » puisqu'il s'agit d'un territoire occupé par Israël[133].

— Quatrièmement, le peuple palestinien bénéficie du droit à l'autodétermination[134].

— Cinquièmement, les instruments relatifs à la protection des droits humains s'appliquent de manière extraterritoriale, y compris en situation de conflit armé et d'occupation militaire[135].

7. Il ressort de ce qui précède que tout territoire au-delà des frontières de 1967 effectivement contrôlé par Israël est un territoire occupé et que toute annexion de tout ou partie du territoire en question, que ce soit *de jure* ou *de facto*, est interdite en droit international.

8. Ainsi sont applicables en territoire palestinien occupé :

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[130] *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)*, p. 136 et suiv. (ci-après l'« avis consultatif sur le *Mur* »).

[131] *Ibid.*, p. 167, par. 78.

[132] *Ibid.*, p. 171, par. 87 ; p. 182, par. 117 ; p. 184, par. 121.

[133] *Ibid.*, p. 194, par. 139.

[134] *Ibid.*, p. 182-183, par. 118.

[135] *Ibid.*, p. 177-181, par. 102-113.

— les règles conventionnelles et coutumières du droit international humanitaire, notamment celles énoncées dans le Règlement annexé à la quatrième convention de La Haye de 1907 ainsi que l'ensemble des règles de la quatrième convention de Genève de 1949[136] ; sont également applicables

— le droit à l'autodétermination ; et

— les règles relatives à la protection des droits humains[137].

9. En situation d'occupation prolongée, les droits humains ont une importance particulière pour la protection de la population occupée. À cet égard, il doit être noté que le terme « occupation prolongée » ne correspond pas à une catégorie juridique spécifique qui serait régie par des règles différentes. En d'autres termes, les mêmes règles s'appliquent à toutes les occupations, qu'elles soient prolongées ou pas. Le caractère prolongé d'une occupation a un effet non pas sur l'*applicabilité* des règles, mais sur leur *application*.

10. Ainsi, par exemple, plus l'occupation dure, plus il deviendra difficile d'invoquer les exceptions liées à la nécessité militaire de la puissance occupante qui sont prévues dans certaines règles du droit international humanitaire[138] ou les dérogations liées à la nécessité prévues dans les instruments de protection des droits humains[139]. De même, plus l'occupation dure, plus les obligations positives de la puissance occupante s'interpréteront de manière large. Ces obligations étant des obligations de comportement, les États doivent « mettre en œuvre tous les moyens qui sont

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[136] *Ibid.*, p. 172, par. 89 et p. 177, par. 101.

[137] Il s'agit, notamment, des conventions suivantes : le pacte international relatif aux droits civils et politiques de 1966, le pacte international relatif aux droits économiques, sociaux et culturels de 1966, la convention sur l'élimination de toutes les formes de discrimination raciale de 1969, et la convention internationale sur les droits de l'enfant de 1989.

[138] Voir, à titre d'exemple, l'article 53 de la quatrième convention de Genève, selon lequel

> « [i]l est interdit à la Puissance occupante de détruire des biens mobiliers ou immobiliers, appartenant individuellement ou collectivement à des personnes privées, à l'État ou à des collectivités publiques, à des organisations sociales ou coopératives, *sauf dans les cas où ces destructions seraient rendues absolument nécessaires par les opérations militaires* ».

Voir aussi l'article 55, alinéa 2, selon lequel « [l]a Puissance occupante ne pourra réquisitionner des vivres, des articles ou des fournitures médicales se trouvant en territoire occupé *que pour les forces et l'administration d'occupation* » ; convention de Genève relative à la protection des personnes civiles en temps de guerre, 12 août 1949, Nations Unies, *Recueil des traités (RTNU)*, vol. 75, p. 323 (ci-après, « GC IV ») (les italiques sont de nous).

[139] Voir, à titre d'exemple, l'article 4 du pacte international relatif aux droits civils et politiques de 1966, Nations Unies, *RTNU*, vol. 999, p. 189.

raisonnablement à leur disposition » pour les réaliser[140]. Dans une situation d'occupation prolongée, le contrôle établi implique que la puissance occupante a plus de moyens à sa disposition pour réaliser les obligations positives issues du droit international humanitaire et des droits humains[141].

11. Après cette brève présentation du cadre juridique général, je m'attacherai maintenant au caractère illicite de l'établissement des colonies en territoire palestinien occupé.

B. L'illicéité de l'établissement des colonies en territoire palestinien occupé

12. L'article 49, alinéa 6, de la quatrième convention de Genève de 1949 prévoit que « [l]a puissance occupante ne pourra procéder à la déportation ou au transfert d'une partie de sa propre population civile dans le territoire occupé par elle »[142].

13. Dans son avis consultatif de 2004, votre Cour a conclu qu'« Israël a mené une politique et développé des pratiques consistant à établir des colonies de peuplement dans le territoire palestinien occupé, contrairement aux prescriptions … du sixième alinéa de l'article 49 »[143].

14. Conformément à cette conclusion de la Cour, la Belgique a affirmé le caractère illicite de l'établissement des colonies en territoire palestinien occupé au regard de la quatrième convention de Genève[144].

15. En outre, la Belgique considère que l'établissement des colonies est contraire aux résolutions pertinentes du Conseil de sécurité, dont je ne citerai, faute de temps, que la résolution 2334, adoptée le 23 décembre 2016. Conformément aux critères énoncés par votre Cour dans l'avis consultatif sur la Namibie, cette résolution constitue une décision énonçant des

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[140] *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I)*, p. 221, par. 430. Voir aussi les observations finales concernant le quatrième rapport périodique d'Israël du Comité des droits économiques, sociaux et culturels, 12 novembre 2019, doc. E/C.12/ISR/CO/4, p. 2, par. 11.

[141] Voir, dans le même sens, le rapport de la Commission du droit international sur les principes sur la protection de l'environnement en rapport avec les conflits armés et commentaires y relatifs, adoptés en deuxième lecture en 2022, soixante-treizième session, 18 avril-3 juin et 4 juillet-5 août 2022, doc. A/77/10, p. 167, par. 6. L'Assemblée générale des Nations Unies a pris acte des principes en question et des commentaires y relatifs dans sa résolution 77/104, adoptée le 7 décembre 2022. Voir aussi « Convention (I) de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne, 12 août 1949, commentaire de 2016, article 2 – application de la convention », par. 322, accessible à l'adresse suivante : https://ihl-databases.icrc.org/fr/ihl-treaties/gci-1949/article-2/commentary/2016?activeTab=undefined (consulté le 10 février 2024).

[142] GC IV, p. 319.

[143] Avis consultatif sur le *Mur*, p. 183, par. 120.

[144] Voir, à titre d'exemple, S/PV.8669, 20 novembre 2019, p. 10.

obligations à destination des États Membres des Nations Unies[145]. Ainsi, après avoir affirmé que la création des colonies constitue une « violation flagrante du droit international », le Conseil de sécurité « *[e]xige de nouveau* d'Israël qu'il arrête immédiatement et complètement toutes ses activités de peuplement dans le Territoire palestinien occupé, y compris Jérusalem-Est »[146].

16. Au vu des termes clairs du paragraphe mentionné, il est évident que la poursuite de la politique de colonisation par Israël contrevient à la résolution 2334 du Conseil de sécurité.

17. Ceci conclut le deuxième point de l'exposé oral de la Belgique. Monsieur le président, avec votre permission, je vais maintenant passer la parole au professeur Vaios Koutroulis pour poursuivre la présentation des arguments de la Belgique.

Je vous remercie pour votre attention.

Le PRÉSIDENT : Je remercie Monsieur Heirbaut. Je donne à présent la parole à Monsieur le professeur Vaios Koutroulis. Monsieur, je vous en prie.

M. KOUTROULIS :

1. Monsieur le président, Honorables Membres de la Cour, c'est un immense honneur pour moi de me présenter pour la première fois devant vous aujourd'hui au nom du Royaume de Belgique. Je poursuivrai l'exposé oral de la Belgique en me penchant sur les règles pertinentes pour apprécier l'illicéité de la politique de la colonisation du territoire palestinien occupé (C) avant de conclure sur les conséquences juridiques des violations identifiées (D).

C. L'illicéité de la politique de la colonisation du territoire palestinien occupé

2. Le Conseil de sécurité, dans sa résolution 2334 de 2016, met clairement en exergue le caractère multidimensionnel de la politique de la colonisation du territoire palestinien occupé[147]. Dans le même ordre d'idées, la Belgique a insisté dans ses interventions au sein du Conseil de sécurité

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[145] *Conséquences juridiques pour les États de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 53, par. 114.

[146] S/RES/2334 (2016), adoptée le 23 décembre 2016, p. 2 (les italiques sont dans l'original). Voir aussi S/RES/452 (1979), 20 juillet 1979, par. 3 et 4 du préambule et par. 3 ; S/RES/1515 (2003), 16 novembre 2003, par. 1 et 2 ; S/2003/529, 7 mai 2003, p. 5.

[147] Voir S/RES/2334 (2016), adoptée le 23 décembre 2016, préambule, par. 2 et 4.

sur le lien entre l'établissement des colonies et ses mesures connexes, mesures qui font partie intégrante d'une véritable *politique* de colonisation illégale[148].

3. Il est ainsi impossible d'analyser juridiquement cette politique de colonisation sans avoir égard aux mesures concrètes par lesquelles elle se matérialise, au contexte général dans lequel elle s'inscrit et aux effets produits par elle.

4. Les mesures par lesquelles la politique de colonisation se matérialise[149], considérées individuellement, sont problématiques à l'égard du droit applicable en territoire occupé, à savoir, notamment, le droit international humanitaire et les droits humains. À cet égard, la Belgique a toujours condamné tout particulièrement le recours à la violence par les colons envers la population palestinienne occupée et souhaite relever l'obligation d'Israël de mettre fin à cette violence et d'en punir les auteurs.

5. Mais, plus fondamentalement, la politique de colonisation vise à obtenir une modification de la composition démographique du territoire palestinien occupé et du statut du territoire lui-même. À ce titre, cette politique est contraire à plusieurs règles fondamentales du droit international. J'aborderai successivement l'interdiction de l'acquisition du territoire par la force, le droit à l'autodétermination et le principe de non-discrimination.

6. Premièrement, la politique de colonisation est contraire à l'interdiction de l'acquisition du territoire par la force. Cette interdiction fait partie intégrante de l'interdiction du recours à la force énoncée dans l'article 2, paragraphe 4, de la Charte des Nations Unies, dans la résolution 2625 (XXV) de l'Assemblée générale des Nations Unies[150] ainsi que dans l'article 3, alinéa *a),* de la définition annexée à la résolution 3314 (XXIX) de l'Assemblée générale[151].

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[148] Voir les procès-verbaux des séances suivantes du Conseil de sécurité, S/PV.8532, 22 mai 2019, p. 21 ; S/PV.8449, 22 janvier 2019, p. 15.

[149] Il s'agit, notamment, des mesures suivantes : expulsions et déplacements forcés des personnes, démolitions des maisons et des structures palestiniennes, confiscations des propriétés privées, mesures législatives visant à faciliter l'avancée de la colonisation, exploitation des ressources naturelles du territoire occupé, violence liée à l'existence des colonies ; voir, à titre d'exemple, S/PV.8449, 22 janvier 2019, p. 15-16 ; S/PV.8489, 26 mars 2019, p. 13 ; S/PV.8519, 29 avril 2019, p. 17 ; S/PV.8557, 19 juin 2019, p. 18-19 ; S/PV.8583, 23 juillet 2019, p. 20.

[150] A/RES/2625 (XXV), adoptée le 24 octobre 1970, annexe, premier principe.

[151] A/RES/3314 (XXIX), adoptée le 14 décembre 1974, annexe, art. 3 *a)*.

7. Dans son avis consultatif de 2004, votre Cour a confirmé l'applicabilité de l'interdiction de l'acquisition du territoire par la force au territoire palestinien occupé. Cette interdiction comprend l'annexion tant *de jure* que *de facto*.

8. Les mesures adoptées par Israël dans le cadre de sa politique de colonisation visent à la création sur le terrain de faits irréversibles et à la consolidation de son contrôle sur le territoire concerné à travers l'établissement des colonies[152]. Elles créent ainsi une situation de fait accompli qui s'apparente à une annexion *de facto*[153], telle que votre Cour l'a définie dans son avis consultatif de 2004[154].

9. Deuxièmement, la politique de colonisation est contraire au droit à l'autodétermination du peuple palestinien. Ce droit est consacré dans la Charte des Nations Unies[155] et réaffirmé dans la résolution 2625 (XXV) de l'Assemblée générale[156] ainsi que dans l'article premier du pacte international relatif aux droits civils et politiques et du pacte international relatif aux droits économiques, sociaux et culturels de 1966[157], pactes auxquels Israël est partie.

10. La résolution 2625 (XXV) précise que le fait de « soumettre des peuples à la subjugation, à la domination ou à l'exploitation étrangères constitue une violation » du droit à l'autodétermination et que les États ont « le devoir de s'abstenir de recourir à *toute mesure de coercition* » qui priverait les peuples de leur droit à l'autodétermination[158].

11. Dans son avis consultatif de 2004, votre Cour a conclu à la violation du droit à l'autodétermination. Pour ce faire, elle a porté une attention particulière aux mesures entraînant le « départ de populations palestiniennes de certaines zones » et la modification de la composition

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[152] Rapport de la Commission internationale indépendante chargée d'enquêter dans le Territoire palestinien occupé, y compris Jérusalem-Est, et en Israël, Nations Unies, doc. A/77/328, 14 septembre 2022, p. 26, par. 75 et p. 27, par. 76.

[153] Voir S/PV.8604, 27 août 2019, p. 11 (Belgique).

[154] Avis consultatif sur le *Mur*, p. 184, par. 121.

[155] Charte des Nations Unies, article premier, par. 2, et 55.

[156] A/RES/2625 (XXV), adoptée le 24 octobre 1970, annexe, cinquième principe : « Le principe de l'égalité de droits des peuples et de leur droit à disposer d'eux-mêmes ».

[157] Pacte international relatif aux droits civils et politiques de 1966, p. 188 ; pacte international relatif aux droits économiques, sociaux et culturels, *RTNU*, vol. 993, p. 14.

[158] A/RES/2625 (XXV), adoptée le 24 octobre 1970, annexe, cinquième principe, par. 2 et 5 (les italiques sont de nous). Selon la CIJ, la déclaration 2625 confirme « le caractère normatif en droit international coutumier » du droit à l'autodétermination ; *Effets juridiques de la séparation de l'archipel des Chagos de Maurice en 1965, avis consultatif, C.I.J. Recueil 2019 (I)*, p. 133, par. 155.

démographique du territoire palestinien occupé[159]. De même, dans son rapport publié le 14 septembre 2022, la Commission internationale indépendante créée par le Conseil des droits de l'homme et chargée d'enquêter dans le Territoire palestinien occupé, y compris Jérusalem-Est, et en Israël souligne que « le choix de l'emplacement de certaines nouvelles colonies … réduit encore la probabilité de la fin de l'occupation et viole le droit des Palestiniens à l'autodétermination »[160].

12. Il ressort de ce qui précède que l'adoption de mesures coercitives liées à la politique de colonisation visant à la modification du statut et de la composition démographique du territoire palestinien occupé est contraire au droit à l'autodétermination[161].

13. Troisièmement, la politique de colonisation suscite de sérieuses inquiétudes au regard du principe de non-discrimination.

14. En effet, l'établissement des colonies est intrinsèquement lié à la mise en place des deux systèmes institutionnels et juridiques distincts, l'un pour les habitants des colonies et l'autre pour la population palestinienne du territoire occupé. La Commission internationale indépendante chargée d'enquêter dans le Territoire palestinien occupé, y compris Jérusalem-Est, et en Israël, ainsi que le Comité pour l'élimination de la discrimination raciale ont souligné justement le caractère problématique des mesures concernées par rapport au principe de non-discrimination[162].

15. Ainsi — et pour conclure avec cette partie de l'exposé oral du Royaume de Belgique —, la politique de colonisation est problématique à l'égard de l'interdiction de l'acquisition du territoire par la force, du droit à l'autodétermination et du principe de non-discrimination.

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[159] Avis consultatif sur le *Mur*, p. 184, par. 122.

[160] Rapport de la Commission internationale indépendante chargée d'enquêter dans le Territoire palestinien occupé, y compris Jérusalem-Est, et en Israël, Nations Unies, doc. A/77/328, 14 septembre 2022, p. 6, par. 15.

[161] Voir aussi A/RES/77/247, adoptée le 30 décembre 2022, par. 6.

[162] Rapport de la Commission internationale indépendante chargée d'enquêter dans le Territoire palestinien occupé, y compris Jérusalem-Est, et en Israël, Nations Unies, doc. A/77/328, 14 septembre 2022, p. 16, par. 45-47 ; Comité pour l'élimination de la discrimination raciale, Observations finales concernant le rapport d'Israël valant dix-septième à dix-neuvième rapports périodiques, Nations Unies, doc. CERD/C/ISR/CO/17-19, 27 janvier 2020, p. 5, par. 22-23 ; Comité pour l'élimination de la discrimination raciale, Examen des rapports présentés par les États parties conformément à l'article 9 de la Convention, Observations finales du Comité pour l'élimination de la discrimination raciale, Israël, Nations Unies, doc. CERD/C/ISR/CO/14-16, 3 avril 2012, p. 7, par. 25.

D. Conséquences juridiques de la violation par Israël des règles du droit international précitées

16. J'en viens à présent au quatrième et dernier point de l'exposé oral de la Belgique : les conséquences juridiques des violations identifiées. Je commencerai par les conséquences juridiques pour Israël, avant de m'attarder sur les conséquences juridiques pour les États tiers et les organisations internationales.

17. À titre liminaire, la Belgique souhaite souligner le fait que plusieurs règles mentionnées ci-avant sont des normes impératives du droit international général. On pense, par exemple, au droit à l'autodétermination et à l'interdiction du recours à la force, dont fait partie l'interdiction de l'occupation et de l'annexion d'un territoire par la force. De ce fait, aucune circonstance excluant l'illicéité[163] ne peut être invoquée pour justifier leur violation[164].

18. Pour Israël, les violations identifiées entraînent les conséquences prévues par les règles coutumières de la responsabilité internationale, codifiées dans les articles sur la responsabilité internationale des États pour fait internationalement illicite adoptés par la Commission du droit international en 2001. Il s'agit de l'obligation de mettre fin à une violation continue, l'obligation de réparation ainsi que l'obligation d'offrir des assurances et des garanties de non-répétition[165].

19. Concrètement, concernant la politique de colonisation, eu égard au caractère continu de la violation, la Belgique se permet de mettre en avant tout particulièrement l'obligation d'Israël de mettre fin à toute activité de colonisation. Comme il a été affirmé dans le cadre de l'avis consultatif de 2004, l'obligation de réparation doit « tout d'abord prendre la forme d'une restitution », à savoir, entre autres, le démantèlement des colonies de peuplement, « l'annulation des actes juridiques » liés à la politique de colonisation et « la restitution des biens réquisitionnés ou expropriés » dans la mise en place de cette politique[166]. Celle-ci est également l'option privilégiée par la résolution 2334 de 2016[167] du Conseil de sécurité.

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[163] Cf. les références aux actes terroristes mettant en danger la sécurité nationale d'Israël et aux considérations légitimes de sécurité (« legitimate security concerns ») dans l'exposé écrit soumis par Israël dans le cadre de la phase écrite de la présente procédure consultative ; Statement of the State of Israel pursuant to the Court's Order of 3 February 2023 relating to the advisory proceedings initiated by UN General Assembly resolution 77/247, p. 1-3.

[164] A/RES/56/83, adoptée le 12 décembre 2001, annexe, articles sur la responsabilité de l'État pour fait internationalement illicite, p. 7, art. 26 (ci-après les « articles sur la responsabilité de l'État »).

[165] *Ibid.*, p. 7, art. 30 *a)* et *b)*, p. 8, art. 31.

[166] Avis consultatif sur le *Mur*, p. 196, par. 145.

[167] S/RES/2334 (2016), adoptée le 23 décembre 2016, par. 4.

20. Concernant les États tiers, leurs obligations sont fondées sur plusieurs règles du droit international, à savoir, les règles relatives à la responsabilité internationale des États, l'obligation de faire respecter le droit international humanitaire, ainsi que le droit à l'autodétermination.

21. Dans un premier temps, pour ce qui est des violations graves des normes impératives du droit international, les États :

— ne doivent pas « reconnaître comme licite une situation créée par une violation grave » d'une norme impérative ;

— ne doivent pas « prêter aide ou assistance au maintien » de la situation illicite créée par la violation grave de la norme impérative ; et

— « doivent coopérer pour mettre fin » à la violation[168].

22. Dans un deuxième temps, pour ce qui est des violations des règles du droit international humanitaire, l'obligation conventionnelle et coutumière de « faire respecter » ces règles est énoncée dans l'article premier commun aux quatre conventions de Genève[169]. Cette obligation s'adresse aussi aux États tiers[170], et comprend des obligations tant négatives que positives. L'obligation de ne pas encourager, ne pas aider ou ne pas assister à la commission d'une violation constitue un exemple d'obligation négative[171]. L'obligation d'adopter des mesures pour inciter les parties belligérantes à cesser les violations du droit international humanitaire est un exemple d'obligation positive[172].

23. Dans un troisième temps, une obligation similaire envers les États tiers existe en ce qui concerne le droit à l'autodétermination.

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[168] Articles sur la responsabilité de l'État, p. 9, art. 41, par. 1 et 2. Voir aussi CDI, projet de conclusions sur la détermination et les conséquences juridiques des normes impératives du droit international général (*jus cogens*), annexe, Nations Unies, doc. A/77/10, p. 19, conclusion 19, par. 1 et 2 (ci-après le « projet des conclusions sur le *jus cogens* ») ; conclusions de l'avocat général M. Melchior Wathelet, présentées le 10 janvier 2018, affaire C-266/16, par. 128-129, accessibles à l'adresse suivante : https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:62016CC0266 (consulté le 28 janvier 2024).

[169] GC IV, p. 289.

[170] Avis consultatif sur le *Mur*, p. 200, par. 159.

[171] Voir convention (I) de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne, 12 août 1949, commentaire de 2016, art. 1, par. 154, 160, accessible à l'adresse suivante : https://ihl-databases.icrc.org/fr/ihl-treaties/gci-1949/article-1/commentary/2016?activeTab=undefined (consulté le 28 janvier 2024).

[172] *Ibid.*, par. 164. Pour certains exemples de mesures allant dans ce sens, voir Conseil des droits de l'homme, résolution 37/36 : « Les colonies de peuplement israéliennes dans le territoire palestinien occupé, y compris Jérusalem-Est, et le Golan syrien occupé », adoptée le 23 mars 2018.

24. En effet, la résolution 2625 (XXV) prévoit que « tout État a le devoir de favoriser, conjointement avec d'autres États ou séparément, la réalisation du principe de l'égalité de droits des peuples et de leur droit à disposer d'eux-mêmes »[173].

25. La résolution 2334 (2016) fournit un exemple concret de mise en œuvre de toutes ces obligations. Dans cette résolution, le Conseil de sécurité demande à tous les États de « faire une distinction, dans leurs échanges en la matière, entre le territoire de l'État d'Israël et les territoires occupés depuis 1967 »[174]. Cette demande reflète l'obligation de mener ses relations, y compris les relations économiques et commerciales, de telle manière à ce qu'aucune reconnaissance, aucune assistance et aucune contribution ne soit fournie au maintien de la situation illicite des colonies[175].

26. Enfin — et ceci sera le dernier point soulevé par le Royaume de Belgique —, les conséquences juridiques liées aux violations graves des normes impératives sont également valables pour les organisations internationales[176]. Une organisation internationale agira évidemment dans les limites de son mandat. Mais lorsqu'elle a un pouvoir discrétionnaire d'agir, elle doit exercer ce pouvoir de sorte à mettre fin aux violations graves des normes impératives[177].

27. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, ceci conclut l'exposé oral du Royaume de Belgique. Je vous remercie pour votre aimable attention.

Le PRÉSIDENT : Je remercie la délégation de la Belgique pour son exposé, qui met un terme à l'audience de ce matin. La Cour se réunira de nouveau cet après-midi, à 15 heures, pour entendre le Belize, la Bolivie, le Brésil et le Chili. L'audience est levée.

L'audience est levée à 13 heures.

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[173] A/RES/2625 (XXV), adoptée le 24 octobre 1970, annexe, cinquième principe, par. 3. Voir aussi l'article premier, paragraphe 3, des deux pactes internationaux de 1966, qui précise que les États parties aux pactes sont tenus non seulement de respecter le droit à l'autodétermination, mais également d'en « faciliter la réalisation ».

[174] S/RES/2334 (2016), adoptée le 23 décembre 2016, par 5.

[175] Voir dans le même sens, Conseil des droits de l'homme, résolution 52/35, adoptée le 4 avril 2023, A/HRC/RES/52/35, p. 6, par. 11 *a)*. Voir aussi S/RES/465 (1980), adoptée le 1er mars 1980, par. 7.

[176] Voir Avis consultatif sur le *Mur*, p. 200, par. 160 ; A/RES/66/100, adoptée le 9 décembre 2011, annexe, articles sur la responsabilité des organisations internationales, p. 11, art. 42 ; A/RES/77/187, adoptée le 14 décembre 2022), par. 11. Voir aussi Conclusions de l'avocat général M. Melchior Wathelet, par. 141.

[177] Projet des conclusions sur le *jus cogens*, commentaire à la conclusion 19, par. 11.