Non corrigé
Uncorrected

CR 2024/6

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Tuesday 20 February 2024, at 3 p.m., at the Peace Palace,

President Salam presiding,

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

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le mardi 20 février 2024, à 15 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

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

COMPTE RENDU

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

The Government of Belize is represented by:

HE Mr Assad Shoman, Ambassador, Special Envoy of the Prime Minister of Belize responsible for sovereignty matters,

as Agent;

Mr Ben Juratowitch, KC, member of the Bars of Belize, Paris, and England and Wales, Essex Court Chambers,

Ms Philippa Webb, Professor of Public International Law, King's College London, member of the Bars of Belize, England and Wales, and the State of New York, Twenty Essex,

as Counsel and Advocates;

Ms Callista Harris, member of the Bar of New South Wales, Australia, 7 Wentworth Selborne Chambers,

Ms Catherine Drummond, legal practitioner admitted in Queensland, Australia,

as Counsel;

Ms Mariana Verde, Chief Operations Officer, Office of Belize's Agent to the International Court of Justice, Ministry of Foreign Affairs, Foreign Trade and Immigration of Belize,

as Adviser.

The Plurinational State of Bolivia is represented by:

HE Mr Roberto Calzadilla Sarmiento, Ambassador of the Plurinational State of Bolivia to the Kingdom of the Netherlands,

Ms Fabiola Cruz Moreno, Second Secretary, Embassy of the Plurinational State of Bolivia to the Kingdom of the Netherlands.

The Government of the Federative Republic of Brazil is represented by:

HE Mr Fernando Simas Magalhães, Ambassador of the Federative Republic of Brazil to the Kingdom of the Netherlands,

a*s Head of Delegation;*

Mr Emerson Novais Lopes, Counsellor,

Mr Frederico Bauer, Counsellor,

Ms Maria Clara de Paula Tusco, Counsellor,

Mr Gaétan Isaac Maria Spielmann Moura, Secretary,

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

Le Gouvernement du Belize est représenté par :

S. Exc. M. Assad Shoman, ambassadeur, envoyé spécial du premier ministre du Belize chargé des questions de souveraineté,

comme agent ;

M. Ben Juratowitch, KC, membre des barreaux du Belize et de Paris ainsi que du barreau d'Angleterre et du pays de Galles, Essex Court Chambers,

M^me^ Philippa Webb, professeure de droit international public au King's College London, membre des barreaux du Belize et de l'État de New York ainsi que du barreau d'Angleterre et du pays de Galles, cabinet Twenty Essex,

comme conseils et avocats ;

M^me^ Callista Harris, membre du barreau de Nouvelle-Galles du Sud (Australie), 7 Wentworth Selborne Chambers,

M^me^ Catherine Drummond, avocate, Queensland (Australie),

comme conseils ;

M^me^ Mariana Verde, directrice des opérations, bureau de l'agent du Belize devant la Cour internationale de Justice, ministère des affaires étrangères, du commerce extérieur et de l'immigration du Belize,

comme conseillère.

Le Gouvernement de l'État plurinational de Bolivie est représenté par:

S. Exc. M. Roberto Calzadilla Sarmiento, ambassadeur de l'État plurinational de Bolivie auprès du Royaume des Pays-Bas.

M^me^ Fabiola Cruz Moreno, deuxième secrétaire, ambassade de l'État plurinational de Bolivie au Royaume des Pays-Bas.

Le Gouvernement de la République fédérative du Brésil est représenté par :

S. Exc. M. Fernando Simas Magalhães, ambassadeur de la République fédérative du Brésil auprès du Royaume des Pays-Bas,

comme chef de délégation ;

M. Emerson Novais Lopes, conseiller,

M. Frederico Bauer, conseiller,

M^me^ Maria Clara de Paula Tusco, conseillère,

M. Gaétan Isaac Maria Spielmann Moura, secrétaire,

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

Mr Pedro Muniz Pinto Sloboda, Secretary,

Ms Ana Beatriz Schwanck Fernandes, Attaché.

The Government of the Republic of Chile is represented by:

Ms Ximena Fuentes Torrijo, Special Representative of the Republic of Chile,

HE Mr Jaime Moscoso Valenzuela, Ambassador of the Republic of Chile to the Kingdom of the Netherlands,

Mr José Juan Hernández Chávez, Counsellor of the Permanent Mission of Chile to the United Nations,

Ms Paula Monsalve Espinoza, First Secretary of the Embassy of the Republic of Chile in the Kingdom of the Netherlands,

Ms María Catalina Fernández Carter, Head of the Department of the Universal Human Rights System, Ministry of Foreign Affairs of Chile.

M. Pedro Muniz Pinto Sloboda, secrétaire,

M^me^ Ana Beatriz Schwanck Fernandes, attachée.

Le Gouvernement de la République du Chili est représenté par :

M^me^ Ximena Fuentes Torrijo, représentante spéciale de la République du Chili,

S. Exc. M. Jaime Moscoso Valenzuela, ambassadeur de la République du Chili auprès du Royaume des Pays-Bas,

M. José Juan Hernández Chávez, conseiller de la mission permanente du Chili auprès de l'Organisation des Nations Unies,

M^me^ Paula Monsalve Espinoza, première secrétaire de l'ambassade de la République du Chili au Royaume des Pays-Bas,

M^me^ María Catalina Fernández Carter, cheffe du département du système universel des droits de l'homme, ministère des affaires étrangères du Chili.

The PRESIDENT: Please be seated. The sitting is open. The Court meets this afternoon to hear Belize, Bolivia, Brazil and Chile on the questions submitted to it by the United Nations General Assembly. Each delegation is kindly asked to respect the 30-minute time allocation for its presentation. This afternoon, the Court will observe a short break after the presentation of Bolivia. I shall now give the floor to the representative of Belize, His Excellency Mr Assad Shoman. Your Excellency, you have the floor.

Mr SHOMAN:

I. SELF-DETERMINATION

1. President, Members of the Court, the Palestinian people have an inalienable right to self-determination and complete independence[1], which has *always* been systematically denied to them.

2. The League of Nations Mandate territories had a right to independence which was realized for all of them[2] — *except* for Palestine.

3. The United Nations Charter enshrined the right to self-determination for the protection of all peoples[3] — *except*, in practice, for the Palestinians, more than half of whom were massacred or driven off their land in the 1948 Nakba[4]. Their land was partitioned and half of it allocated to a new State that promptly extended it to 78 per cent by brute force[5].

4. In 1967, just seven years after resolution 1514[6], Israel commenced its *still-continuing* occupation of the *entirety* of the remaining Palestinian territory.

---

[1] See UNGA resolution 78/192, UN doc. A/RES/78/192, 19 Dec. 2023 (172 votes in favour), para. 1; Written Statement of Belize, paras. 13-18.

[2] See Written Statement of Belize, paras. 14-17.

[3] UN Charter, Art. 1 (2) and Chap. XI; *Chagos* Advisory Opinion, p. 131, paras. 146-148.

[4] UN, "The Question of Palestine – About the Nakba", https://www.un.org/unispal/about-the-nakba/; Statement by the Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People at the Commemoration of the 75th Anniversary of the Nakba at UN Headquarters in New York, 15 May 2023, https://www.un.org/unispal/document/commemoration-of-the-75th-anniversary-of-the-nakba-at-un-headquarters-in-new-york-ceirpp-chair-statement/.

[5] UNGA res. 181 (II), UN doc. A/RES/181(II), 29 Nov. 1947.

[6] UNGA res. 1514 (XV), "Declaration on the granting of independence to colonial countries and peoples", UN doc. A/RES/1514(XV), 14 Dec. 1960 ("UNGA resolution 1514 (XV) (1960)") discussed at Written Statement of Belize, paras. 16-17.

5. Since then, Israel has, through its systematic manipulation of negotiations to undermine the presumed objectives, ensured that the Palestinian people are prevented from *ever* exercising that right.

6. Israel *cannot* be permitted to continue flouting one of the most fundamental principles of international law with impunity. Impunity breeds inhumanity.

7. The right of the Palestinian people to self-determination is violated in many ways. I will focus on three.

1. Denial of the right to territorial integrity

8. First, the exclusion of Palestinians from *any* part of the Palestinian territory[7] denies their right to territorial integrity, which is an essential part of the right to self-determination[8]. The Palestinian people have a right to self-determination *within the entirety* of their territory.

9. Yet Israel has systematically removed and excluded Palestinians from parts of their territory. It has separated Gaza from the West Bank and prevented the free movement of Palestinians within the Palestinian territory[9]. It has prohibited the return of Palestinians to their homes and property[10] and established exclusionary illegal settlements in the West Bank, including East Jerusalem[11].

10. This is especially egregious because many of these almost 700,000 State-supported settlers are continuously terrorizing and forcibly displacing Palestinians from *even more* of their territory and engaging in pogroms against them[12].

---

[7] The term "Palestinian territory" is defined in Written Statement of Belize, para. 8.

[8] *Chagos* Advisory Opinion, p. 134, para. 160. See also *Wall* Advisory Opinion, pp. 170-171, para. 85, p. 184, para. 122 and pp. 189-191, para. 133.

[9] See Written Statement of Belize, paras. 22 *(b)* and *(c)*, and 56 *(a)*, *(c)* and *(e)*.

[10] See *ibid.*, paras. 57-62.

[11] See *ibid.*, paras. 22 *(b)* and 35-42.

[12] See *ibid.*, para. 56 *(b)*; OCHA, "The other mass displacement: while eyes are on Gaza, settlers advance on West Bank herders", 1 Nov. 2023, https://www.unocha.org/publications/report/occupied-palestinian-territory/other-mass-displacement-while-eyes-are-gaza-settlers-advance-west-bank-herders-enhe; UN Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, "End-of-Mission Statement", 16 June 2023, https://www.ohchr.org/en/statements/2023/06/end-mission-statement-un-special-committee-investigate-israeli-practices.

2. Denial of the existence of the Palestinian people

11. Second, Israel denies the *existence* of Palestinians as a people[13]. The Israeli Minister of Finance, himself an illegal settler[14], has stated that "there's no such thing as a Palestinian people"[15]. Senior Israeli leaders routinely deny that the Palestinian people have a right to self-determination[16].

12. Moreover, the case brought by South Africa[17] — which Belize fully supports — lays bare the fact that Israel's genocidal campaign in Gaza also denies *the right of Palestinians to exist at all*.

13. One key tactic in this regard is Israel's deliberate use of starvation to destroy the civilian population of Gaza[18]. Gaza's *entire* population of more than two million people is in crisis, facing the "worst levels of acute food insecurity"[19]. By December 2023, the famine threshold had already been exceeded and the situation was deteriorating rapidly[20]. This famine is not an accident. Indeed, senior Israeli officials have already clearly stated their intent to deprive civilians in Gaza of food and water[21].

---

[13] See Written Statement of Belize, para. 20.

[14] "Netanyahu hands Smotrich full authority to expand existing settlements", *The Times of Israel*, 18 June 2023, https://www.timesofisrael.com/netanyahu-hands-smotrich-full-authority-to-expand-existing-settlements/.

[15] "Far-right Minister Smotrich: There's No Such Thing as the Palestinians, White House Must Hear the Truth", *Haaretz*, 20 Mar. 2023, https://www.haaretz.com/israel-news/2023-03-20/ty-article/.premium/israels-smotrich-theres-no-such-thing-as-palestinians-white-house-must-hear-the-truth/00000186-fd95-db5a-a787-ffddb9550000. See also "Israeli minister condemned for claiming 'no such thing' as a Palestinian people", *The Guardian*, 20 Mar. 2023, https://www.theguardian.com/world/2023/mar/20/israeli-minister-condemned-claiming-no-such-thing-as-a-palestinian-people-bezalel-smotrich.

[16] See e.g. Basic Law: Israel – the Nation State of the Jewish People (2018), https://main.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf, section 1(c); Benjamin Netanyahu, Prime Minister of Israel, *X (formerly Twitter)*, 20 Jan. 2024, https://twitter.com/netanyahu/status/1748764135716749568. See also "Israeli minister calls for voluntary emigration of Gazans", 14 Nov. 2023, https://www.reuters.com/world/middle-east/israeli-minister-calls-voluntary-emigration-gazans-2023-11-14/.

[17] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel)*, Application instituting proceedings, 29 Dec. 2023.

[18] Convention on the Prevention and Punishment of the Crime of Genocide, 9 Dec. 1948, entered into force 12 Jan. 1951, 78 *UNTS* 277, Article II *(c)*.

[19] UN World Food Program, "Emergency: State of Palestine", 2024, https://www.wfp.org/emergencies/palestine-emergency.

[20] OCHA, "Hostilities in the Gaza Strip and Israel | Flash Update #113", 7 Feb. 2024, https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-113; Integrated Food Security Phase Classification (IPC) Famine Review Committee (FRC), "Gaza Strip: Famine Review of the IPC Analysis – Conclusions and Recommendations", 21 Dec. 2023, https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Review_Report_Gaza.pdf, pp. 2 and 11.

[21] "Defense minister announces 'complete siege' of Gaza: No power, food or fuel", *The Times of Israel*, 9 Oct. 2023, https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/; National Security Minister Itamar Ben-Gvir, *X (formerly Twitter)*, 17 Oct. 2023, https://twitter.com/itamarbengvir/status/1714340519487176791; Energy Minister Israel Katz, *X (formerly Twitter)*, 16 Oct. 2023, https://twitter.com/Israel_katz/status/1713807517816348906. See also "Gaza aid stuck as Egypt says Israel not cooperating", *Reuters*, 16 Oct. 2023, https://www.reuters.com/world/egypt-us-israel-agree-ceasefire-southern-gaza-opening-rafah-crossing-0600-gmt-2023-10-16/; "Egypt says 'Israel obstacles' impeding aid delivery to Gaza", *Reuters*, 28 Oct. 2023, https://www.reuters.com/world/middle-east/egypt-says-israeli-obstacles-impeding-aid-delivery-gaza-2023-10-28/; "Egypt willing to open Rafah crossing without conditions", *Anadolu Agency (AA)*, 9 Feb. 2024, https://www.aa.com.tr/en/middle-east/egypt-willing-to-open-rafah-crossing-without-conditions/3132886.

14. In its planned erasure of the Palestinian people, Israel is also destroying Palestinian cultural, educational and historical institutions in Gaza[22]. Almost 400 schools and every single university have been partially or fully destroyed, including one which was used as a base and interrogation centre by Israeli forces for months before they pillaged it and then detonated it[23]. The *intention* is to erase all traces of Palestinian life and culture, to destroy the very essence of what makes the Palestinians a "people"[24]. The message is clear: the total culture of Palestine must be destroyed and they must have *no future* in Gaza.

3. Forcible action denying the right to freedom and complete independence

15. Third, Israel is using forcible action to deprive the Palestinian people of their right to self-determination, freedom and complete independence[25]. This includes the right of the Palestinian people "freely to determine, *without external interference*, their political status and to pursue their economic, social and cultural development"[26]. Israel's forcible action that denies the right to self-determination consists of institutional, coercive policies and practices that exert authority over and oppress the Palestinian people. These include:

(a) the complete control exercised over Palestinian natural and economic resources[27];

(b) the institutionalized and racist apartheid[28];

---

[22] "A 'cultural genocide': Which of Gaza's heritage sites have been destroyed?", *Al Jazeera*, 14 Jan. 2024, https://www.aljazeera.com/news/2024/1/14/a-cultural-genocide-which-of-gazas-heritage-sites-have-been-destroyed.

[23] "Israel blows up another university in Gaza", *Middle East Monitor*, 18 Jan. 2024, https://www.middleeastmonitor.com/20240118-israels-military-occupies-and-destroys-israa-university-in-gaza/; "How Israel has destroyed Gaza's schools and universities", *Al Jazeera*, 24 Jan. 2024, https://www.aljazeera.com/news/2024/1/24/how-israel-has-destroyed-gazas-schools-and-universities.

[24] UNGA res. 1541 (XV), "Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter", UN doc. A/RES/1541(XV), 15 Dec. 1960, Annex, Principles IV and V referring to a people having a "cultural distinctness".

[25] See Written Statement of Belize, paras. 23-24; UNGA res. 2625 (XXV), UN doc. A/RES/2625(XXV), 24 Oct. 1970, Annex: "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" ("Friendly Relations Declaration"), fifth principle, fifth para; UNGA res. 1514 (XV) (1960), para. 4.

[26] Friendly Relations Declaration, fifth principle, first para (emphasis added). See also UNGA res. 1514 (XV) (1960), para. 2; International Covenant on Civil and Political Rights, 16 Dec. 1966, entered into force 23 Mar. 1976, 999 *UNTS* 171, Art. 1 (1); International Covenant on Economic, Social and Cultural Rights, 16 Dec. 1966, entered into force 3 Jan. 1976, 993 *UNTS* 3, Art. 1 (1).

[27] See Written Statement of Belize, paras. 24, 40 and 56 *(a)* and *(e)*.

[28] See *ibid.*, paras. 24 and 63-73.

(c) and the systematic and excessive use of force, arbitrary killing and mass incarceration of Palestinians, including children[29].

16. It also includes action taken by Israel to deny Palestinian political participation by criminalizing political speech and membership of, or connection with, Palestinian political parties[30].

17. As the United Nations rightly says, by depriving Palestinians of their fundamental rights, Israel has taken away their "agency and ability to unite, self-govern and develop as a polity"[31].

18. The consequence of *this* breach is that Israel must immediately, unconditionally and totally withdraw from *all* of the Palestinian territory[32].

19. Israel is determined to ensure that the Palestinian people *do not now and do not ever* exercise their right to self-determination. Israel considers itself an exception. No State reserves to itself the right to systematically violate the right of a people to self-determination — *except* Israel. No State seeks to justify the indefinite occupation of another's territory — *except* Israel. No State commits annexation and apartheid with impunity — *except*, it seems, Israel.

20. But Israel must not be allowed such blatant impunity. It must not be allowed to continue to inflict scars for generations to come on those that survive *this* holocaust. Israel *must* be made to behave like all civilized nations, stop violating international law and United Nations resolutions, and respect the right of the Palestinian people to self-determination.

21. Palestine must be free.

22. I thank you and call on Professor Philippa Webb to continue Belize's submissions.

The PRESIDENT: I thank His Excellency Mr Assad Shoman. I now give the floor to Professor Philippa Webb. You have the floor, Professor.

---

[29] See Written Statement of Belize, paras. 24 and 56 *(b)-(e)*.

[30] See *ibid.*, paras. 24 and 56 *(c)*; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, UN doc. A/HRC/53/59, 9 June 2023, paras. 33 *(a)*, *(b)*, *(f)* and *(j)*, 37, 39 and 85.

[31] Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, UN doc. A/HRC/53/59, 9 June 2023, para. 95.

[32] UNGA res. 35/207, UN doc. A/RES/35/207, 16 Dec. 1980, para. 1.

Ms WEBB:

II. APARTHEID AND CONSEQUENCES IN RESPECT OF SELF-DETERMINATION AND APARTHEID

1. Mr President, Members of the Court, apartheid is "the strongest concentration of racist concepts put into action"[33]. It goes hand-in-hand with Israel's violation of the right to self-determination. It is impossible to realize a people's right to self-determination within an "institutionalised regime of systematic racial oppression and discrimination"[34]. The dehumanizing nature[35] of apartheid suppresses the equality, identity and dignity at the heart of self-determination.

2. The existence of apartheid is relevant to the first question before the Court, which asks about the "legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination . . . and from its adoption of related discriminatory legislation and measures". Although the Court can opine on discrimination falling short of apartheid, there are significant and different legal consequences resulting from the breach of the prohibition of apartheid that arises on the facts before the Court.

3. I will (i) address the definition and scope of apartheid; (ii) apply the definitional elements to the facts; and (iii) set out the legal consequences.

1. Definition and scope of apartheid

4. The Apartheid Convention's definition[36] reflects custom and has the same content as the term "apartheid" in Article 3 of CERD[37]. The prohibition of apartheid is not limited to southern Africa or commission by a particular State[38].

5. The prohibition also applies beyond a State's territory. Article 3 of CERD refers to "territories under [a State's] jurisdiction", which includes situations of occupation. The CERD

---

[33] "Albie Sachs. The gentle revenge at the end of apartheid", Interview with Oliver Tambo, *Index on Censorship*, May 1986, https://journals.sagepub.com/doi/pdf/10.1177/030642209001900402.

[34] 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. 53 cited in Written Statement of Belize, para. 72.

[35] "UN rights chief warns of 'dehumanization' of Palestinians amid West Bank violence as Gaza crisis deepens", 28 Dec. 2023, https://news.un.org/en/story/2023/12/1145132; Written Statement of Belize, para. 56 *(b)*.

[36] International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 Nov. 1973, entered into force 18 July 1976, 1015 *UNTS* 243 (hereinafter the "Apartheid Convention"), Article II.

[37] Written Statement of Belize, 25 July 2023, para. 63; Written Statement of Namibia, July 2023, para. 43.

[38] Written Statement of Namibia, July 2023, para. 49; Written Statement of South Africa, 25 July 2023, para. 118.

Committee has determined that Article 3 applies to the "Palestinian population in Israel . . . and in the Occupied Palestinian Territory"[39].

2. Application to the facts

A. Racial Group

6. First, it is indisputable that the Palestinians are a "racial group" for the purposes of CERD and custom. Under Israeli law, the separate identity of the Jewish race is afforded a privileged status and the right to exercise self-determination in the State of Israel is "exclusive to the Jewish people"[40]. Jewish Israelis and Palestinians are perceived by themselves and by external actors as different racial groups[41].

B. Acts enumerated in Article II of the 1973 Apartheid Convention

7. Second, Israel's deployment of a combination of measures across the Palestinian territory, and against the Palestinian people, falls within Article II of the Apartheid Convention[42]. Israel has long-standing discriminatory laws, policies and practices that affect only Palestinians and are designed to benefit exclusively, and maintain the dominance of, Israeli Jews, on both sides of the Green Line[43]. Moreover, many measures are designed to fragment the Palestinian people as a group, and to separate Palestinians from Israeli Jews[44]. This is what Namibia rightly calls "strategic fragmentation"[45].

---

[39] UN Committee on the Elimination of Racial Discrimination, Concluding Observations: Israel, UN doc. CERD/C/ISR/CO/17-19, 27 Jan. 2020 (hereinafter "UN CERD Committee, 2020 Concluding Observations on Israel"), para. 23; Written Statement of Namibia, July 2023, para. 51.

[40] Israel, Basic Law: Israel – the Nation State of the Jewish People (2018), https://main.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf, section 1(c). See also Israel, Law No. 5712-1952: Nationality Law, 14 July 1953, https://www.refworld.org/legal/legislation/natlegbod/1953/en/14615; Written Statement of Palestine, 24 July 2023, para. 4.242.

[41] Written Statement of Palestine, 24 July 2023, para. 4.243. See also 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. 33.

[42] Apartheid Convention, Article II (a), (c), (d) and (f); Written Statement of Belize, 25 July 2023, paras. 68 and 70; Written Statement of Namibia, July 2023, paras. 59-94; Written Statement of Qatar, 25 July 2023, paras. 4.101-4.103 and Chapter 2; Written Statement of Saudi Arabia, 25 July 2023, para. 72.

[43] See Written Statement of Belize, 25 July 2023, paras. 72-73.

[44] Written Statement of Belize, 25 July 2023, para. 70; Written Statement of South Africa, 25 July 2023, para. 118.

[45] Written Statement of Namibia, July 2023, para. 66.

8. Such measures have been set out in Belize's Written Statement[46]. Here, I emphasize two points. First, in the West Bank, there is the separation wall, restrictive permit requirements, checkpoints and segregated roads. This creates what the Israeli army officially calls "sterilization" — areas and roads closed to Palestinians[47]. "Hebronization" — meaning the strategies of repression and segregation — is spreading[48].

9. Second, Gaza is under siege and blockade. Millions of Palestinians are confined to ever-smaller strips of land — the longest and most complete siege of the greatest number in modern history. The whole of Gaza has become an impoverished, desperate ghetto[49].

10. Since 1967, Israel has detained one million Palestinians, including tens of thousands of children[50].

11. Israel's conduct against the Palestinian people has been characterized as apartheid by United Nations Special Procedures since 2007, including a joint statement of 47 mandate holders in 2020[51].

C. Intent

12. Turning to the third element of apartheid: intent. Israel's measures are imposed "for the purpose" of establishing and maintaining dominance and systematic oppression. This can be inferred from their scale and institutionalized nature, and from the differing effects they have on the Palestinian and Israeli peoples as regards access to basic services and rights protection. It is also

---

[46] Written Statement of Belize, 25 July 2023, paras. 68-73.

[47] "Holy City of Sterile Streets", *The New York Times*, 20 Jan. 2018, https://www.nytimes.com/2018/01/20/opinion/hebron-israel-west-bank.html.

[48] Chatham House Briefing Paper, *Jerusalem: The Cost of Failure*, Feb. 2010, https://www.chathamhouse.org/sites/default/files/public/Research/Middle East/bp0210jerusalem.pdf.

[49] Apartheid Convention, Article II *(d)*; "In the Shadow of the Holocaust", *The New Yorker*, 9 Dec. 2023, https://www.newyorker.com/news/the-weekend-essay/in-the-shadow-of-the-holocaust.

[50] HRC, "Special Rapporteur Says Israel's Unlawful Carceral Practices in the Occupied Palestinian Territory Are Tantamount to International Crimes and Have Turned it into an Open-Air Prison", 10 July 2023, https://www.ohchr.org/en/news/2023/07/special-rapporteur-says-israels-unlawful-carceral-practices-occupied-palestinian.

[51] Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, UN doc. A/HRC/4/17, 29 Jan. 2007, paras. 49-50, 58 and 61; "Israeli annexation of parts of the West Bank would break international law – UN experts call on the international community to ensure accountability", United Nations Press Release, 16 June 2020, https://www.ohchr.org/en/news/2020/06/israeli-annexation-parts-palestinian-west-bank-would-break-international-law-un?LangID=E&NewsID=25960. See also Written Statement of Palestine, 24 July 2023, paras. 4.224-4.237.

directly evidenced by Israeli laws that affirm Jewish supremacy as a "national value"[52]. Intent is heard in the hate speech of Israeli public officials, and political and religious leaders[53]. The Court has ordered Israel to "take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in . . . Gaza"[54]. Intent is also evidenced by Israel's suppression of dissent against the system of apartheid[55].

13. Indoctrination starts in the classroom. The CERD Committee has expressed concern at the "tide of racist hate speech . . . in school curricula and textbooks"[56]. The Committee on the Rights of the Child has pointed to "the extensive militarization of the educational system"[57], which is entrenched during compulsory military service. Israel's State Comptroller has criticized the Government for "doing very little to purge the severe phenomena of racism and hatred among youth and to promote a shared society"[58].

14. If the requisite intent is established, any claimed security rationale cannot displace the conclusion that Israel's conduct falls within Article II[59].

3. Legal consequences

15. In the light of these violations of self-determination and the prohibition of apartheid, Belize requests the Court to formulate precisely what Israel and third States must do. Specific consequences facilitate accountability.

---

[52] Israel, Basic Law: Israel – the Nation State of the Jewish People (2018), https://main.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf, section 7; Written Statement of Qatar, 25 July 2023, para. 4.91.

[53] UN CERD Committee, 2020 Concluding Observations on Israel, para. 26 (a). See also Statement by President of the Security Council, UN doc. S/PRST/2023/1, 20 Feb. 2023, para. 9; Written Statement of Qatar, 25 July 2023, para. 4.92.

[54] *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. 86 (3).

[55] Amnesty International, "Israel's Apartheid Against Palestinians: A Cruel System of Domination and Crime against Humanity", 1 Feb. 2022, https://www.amnesty.org/en/documents/mde15/5141/2022/en/, pp. 17 and 63; Written Statement of Qatar, 25 July 2023, para. 4.97.

[56] UN CERD Committee, 2020 Concluding Observations on Israel, para. 26 (a); Written Statement of Qatar, 25 July 2023, para. 2.236.

[57] UN Committee on the Rights of the Child, Concluding Observations: Israel, UN doc. CRC/C/OPAC/ISR/CO/1, 4 Mar. 2010, para. 26.

[58] Israel's State Comptroller and Ombudsman, Special Report on "Education for a Shared Society and Prevention of Racism", 22 Sept. 2016, https://www.mevaker.gov.il/he/Reports/Pages/546.aspx; Israel's State Comptroller and Ombudsman, "Education for co-existence and the prevention of racism — Follow-up Audit", 2021, https://www.mevaker.gov.il/sites/DigitalLibrary/Documents/2021/71C/EN/2021-71c-210-Prevention-of-Racism-Taktzir-EN.pdf.

[59] See also Written Comments of Pakistan, 2 Nov. 2023, para. 14.

16. Belize refers to the written pleadings that detail such consequences[60]. The core consequence of the violation of the *jus cogens* right to self-determination and the prohibition of apartheid is immediate cessation; Israel must dismantle the physical, legal and policy régime of discrimination and oppression, including freeing political prisoners; evacuate Israeli settlers from Palestinian territories; permit Palestinians to return to their country and property; and lift the siege and blockade of Gaza. These consequences, taken collectively, mean that Israel must immediately, unconditionally and totally withdraw from the entire Palestinian territory[61]. This legal consequence applies irrespective of the outcome of the Court's consideration of occupation and annexation. Israel must also make full reparation for the damage suffered as a result of its violations[62].

17. Mr President, Members of the Court, I thank you for your attention. Mr Juratowitch will continue the submissions of Belize.

The PRESIDENT: I thank Professor Webb. I now give the floor to Mr Ben Juratowitch. You have the floor, sir.

Mr JURATOWITCH:

III. OCCUPATION, ANNEXATION AND THEIR CONSEQUENCES

1. Mr President and Members of the Court, I have the honour to address you on issues of occupation, annexation and their consequences.

1. Unlawful occupation

2. On occupation, Belize makes three points.

3. The first is that Israel is currently occupying all of the Palestinian territory.

4. Secondly, the rules of international law applicable to determine whether the existence of that occupation is lawful are the rules on the use of force, the *jus ad bellum*.

---

[60] Written Statement of Belize, 25 July 2023, paras. 74-91; Written Statement of Palestine, 24 July 2023, Chap. 7; Written Statement of Qatar, 25 July 2023, Chap. 5; Written Statement of Namibia, July 2023, Chap. V.

[61] Speech by HE Mr Assad Shoman, commencement of the oral statement of Belize in these proceedings 20 Feb. 2024, paras. 15-17; Written Statement of Belize, paras. 23-24; UNGA resolution 35/207, UN doc. A/RES/35/207, 16 Dec. 1980, para. 1. See also UNGA resolution 78/192, UN doc. A/RES/78/192, 19 Dec. 2023 (172 votes in favour), preambular para. 8; UN Committee on the Exercise of the Inalienable Rights of the Palestinian People, Study: The Legality of the Israeli Occupation, 2023, https://www.un.org/unispal/document/ceirpp-legal-study2023/, p. 100.

[62] Written Statement of Belize, 25 July 2023, para. 75.

5. Thirdly, when those rules are applied to this occupation, it is evident that the occupation is neither necessary nor proportionate and is thus unlawful.

A. Israel is currently occupying all of the Palestinian territory

6. On the first, Belize will concentrate today on Israel being in occupation of Gaza. That was the case before October last year[63] and remains the case.

7. In July last year, Belize submitted that a State could be in occupation of territory even if it no longer has soldiers in it, if that State could "at any time they desired assume physical control of" the territory and had "the capacity to send troops within a reasonable time to make the authority of the occupying power felt"[64]. That was a tragically prescient submission. Israel has since 7 October certainly made its power felt, and not just in the form of responding to the attack on it. Its recent conduct is a continuation and intensification of its long-term control over, violence against and incursions into Gaza. Israel controls who and what enters and leaves Gaza, including by air and sea, as well as the supply of water and energy[65]. Gaza is under Israeli occupation and has been since 1967[66].

B. *Jus ad bellum* as the applicable law

8. I turn then to the rules applicable to determining whether Israel's ongoing occupation of the Palestinian territory as a whole is lawful.

9. The position of the United States is that the *jus ad bellum* determines the lawfulness of territory becoming occupied, but not of its remaining occupied[67]. On that approach, an occupying Power that has lawfully established an occupation would be unrestrained by law as to how long that occupation lasts. It would be restrained by the *jus in bello* as to how it conducts the occupation, but

---

[63] Written Statement of Belize, 25 July 2023, paras. 27-30 and 56 (e). See also Written Statement of the League of Arab States, 20 July 2023, para. 61.

[64] *The United States of America* v. *Wilhelm List and others* ("*The Hostage Case*"), Judgment, 19 Feb. 1948, in *Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10*, Vol. XI (1950), p. 1243; ICTY, *Prosecutor* v. *Naletilić and Martinović*, IT-98-34-T, Trial Chamber, Judgment, 31 Mar. 2003, para. 217; Written Statement of Belize, 25 July 2023, para. 30.

[65] Written Statement of Belize, 25 July 2023, paras. 28-29 and 56 (e).

[66] See also UNGA resolution 78/121, UN doc. A/RES/78/121, 8 Dec. 2023, preambular para. 8; UNGA resolution 78/170, UN doc. A/RES/78/170, 19 Dec. 2023, preambular para. 14 and para. 8; UNSC resolution 2720, UN doc. S/RES/2720 (2023), 22 Dec. 2023, preambular para. 4; Written Statement of Belize, 25 July 2023, para. 28.

[67] Written Statement of the United States of America, Ch. IV and fn. 74; Written Comments of the United States of America, para. 13 and fn. 37. See also Written Statement of Fiji, p. 5 (fourth and sixth paras.).

it would be under no legal restraint concerning the duration of the occupation. That would of course mean that an occupation could lawfully become indefinite, and that must be incorrect.

10. The correct position is that whether the existence of an occupation is lawful, either at the time of its commencement or as it continues, is determined by the *jus ad bellum*[68]. That follows from the fact that an occupation is a use of force[69]. Even if a use of force is initially necessary and proportionate, once either of those two conditions ceases to be met, the continuing use of force will become unlawful[70]. That applies as much to occupations as it does to any other use of force[71].

C. Israel's occupation of Palestinian territory is unlawful

11. Applying the rules on the use of force to this case, Israel's occupation of Palestinian territory in June 1967 has been unlawful from its inception[72].

12. In any event, Israel's occupation is certainly not now necessary or proportionate[73]. If the occupation was ever lawful, it was part of Israel's use of force against Egypt and Jordan in 1967. Israel signed a peace treaty with Egypt in 1979 and so its occupation of Gaza has been unlawful since at least that time[74]. Israel signed a peace treaty with Jordan in 1994 and so its occupation of the West Bank has been unlawful at least since then[75].

---

[68] Written Statement of Belize, paras. 31-32. See also Written Statement of The Gambia, paras. 1.16 and 1.18; Written Statement of the League of Arab States, paras. 23 and 42; Written Statement of Namibia, para. 142; Written Statement of Pakistan, paras. 22 (i) and 33; Written Statement of Saudi Arabia, para. 36; Written Comments of Qatar, para. 3.17.

[69] See e.g. UNGA resolution 3314 (XXIX), UN doc. A/RES/3314(XXIX), 14 Dec. 1974, Annex: "Definition of Aggression", preambular para. 7. See also Written Statement of the League of Arab States, 20 July 2023, para. 23; Written Statement of The Gambia, 25 July 2023, para. 1.18; Written Statement of Pakistan, 25 July 2023, para. 33; Written Comments of Qatar, 25 Oct. 2023, para. 3.18.

[70] See Written Statement of Belize, 25 July 2023, para. 32; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, *Merits*, *Judgment*, *I.C.J. Reports 1986*, pp. 122-123, para. 237.

[71] Gray, *International Law and the Use of Force* (4th ed., 2018), p. 164; Lieblich and Benvenisti, *Occupation in International Law* (2022), p. 33. See generally ICRC, "Occupation and international humanitarian law: questions and answers", 4 Aug. 2004, https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm. See also Written Statement of the League of Arab States, para. 70; Written Statement of Pakistan, para. 33; Written Comments of Qatar, para. 3.18; Written Comments of Namibia, para. 70; Written Statement of The Gambia, paras. 1.21-1.22.

[72] See Written Statement of Belize, para. 33; UNGA res. 32/20, UN doc. A/RES/32/20, 25 Nov. 1977, preambular para. 4; UNGA res. 33/29, UN doc. A/RES/33/29, 7 Dec. 1978, preambular para. 4; UNGA res. 34/70, UN doc. A/RES/34/70, 6 Dec. 1979, preambular para. 5; UNGA res. 35/122 E, UN doc. A/RES/35/122[E], 11 Dec. 1980, preambular para. 2; UNGA res. 35/207, UN doc. A/RES/35/207, 16 Dec. 1980, preambular para. 3.

[73] See Written Statement of Belize, para. 33; Written Comments of Palestine, paras. 2.44-2.51; Written Comments of Qatar, paras. 3.19 and 3.23-3.26; Written Comments of Namibia, para. 70; Written Comments of Pakistan, para. 11; Written Comments of the League of Arab States, paras. 106-108; Written Statement of the League of Arab States, para. 71; Written Statement of The Gambia, paras. 1.23 and 1.27-1.31.

[74] Treaty of Peace between Egypt and Israel, 26 Mar. 1979, 1136 *UNTS* 100.

[75] Treaty of peace between the State of Israel and the Hashemite Kingdom of Jordan, 26 Oct. 1994, 2042 *UNTS* 351.

13. Guatemala has nonetheless argued in these proceedings that, in light of the events of 7 October, Israel should not be required to cease its presence in Gaza or the West Bank[76].

14. Concerning the West Bank, including East Jerusalem, on no conceivable basis could it credibly be said that Israel's continuing occupation of the West Bank is a necessary or proportionate response to the recent attack by Hamas from Gaza.

15. Concerning Gaza, Israel's use of overwhelming force including its ongoing occupation of Gaza is plainly not a necessary or proportionate response to the October attack[77].

16. In enforcing its occupation, Israel is committing breaches of international humanitarian law, in both Gaza and the West Bank[78]. They are not, however, the breaches that lead to the most important consequences in this case. The fundamental issue, from which the most important consequences follow, is that it is unlawful for Israel to be exercising any control at all in respect of Palestinian territory.

2. Annexation and settlements

17. That brings us to annexation.

18. Whether a State has unlawfully annexed territory[79] depends on two things: first, whether the State has physically seized the territory, and second, whether it has an intention to make the territory its own[80].

---

[76] Written Comments of Guatemala, paras. 10 and 12.

[77] See also Written Comments of Qatar, paras. 3.24-3.26; Written Comments of Namibia, paras. 71-79; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, *Merits*, *Judgment*, *I.C.J. Reports 1986*, pp. 122-123, para. 237; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, p. 196, para. 73 and pp. 198-199, paras. 76-77; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 223, para. 147.

[78] OCHA, "Hostilities in the Gaza Strip and Israel | Flash Update #106", 30 Jan. 2024, https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-106, "Violence and casualties (West Bank)".

[79] See Written Statement of Belize, para. 44; Charter of the United Nations, Art. 2 (4); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, *I.C.J. Reports 2004 (I)*, p. 171, para. 87; UNGA res. 2625 (XXV), UN doc. A/RES/2625(XXV), 24 Oct. 1970, Annex: "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations", first principle, tenth para; Jennings, *Acquisition of Territory in International Law* (1963), p. 56.

[80] See Jennings, *Acquisition of Territory in International Law* (1963), p. 52.

19. The requisite intention can be evidenced by a formal declaration of annexation, but it can also exist implicitly if the State has "clearly manifested its intention to hold the . . . territory permanently under its dominion"[81]. That is what the Court has described as "*de facto* annexation"[82].

20. In one form or another, Israel has annexed all of the Palestinian territory. This is clear from the map you have seen used by the Prime Minister of Israel before the General Assembly last September that showed the West Bank and Gaza as part of Israel[83].

21. For East Jerusalem, the position is the most straightforward, since Israel has formally annexed it under Israeli law[84].

22. For the remainder of the West Bank, it is hardly less obvious[85].

23. Israel has occupied the entirety of the West Bank for 57 years with no plan for withdrawal or acknowledgement of any need or intention to ever withdraw.

24. On the contrary, it has an increasingly active programme of settling hundreds of thousands of Israelis in hundreds of settlements in the West Bank[86]. These are permanent settlements on land that Israel is treating as its own.

25. Israeli officials thus speak of all of the West Bank as land over which Israel is sovereign[87].

---

[81] See Phillipson, *Termination of War and Treaties of Peace* (1916), p. 9.

[82] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, *I.C.J. Reports 2004 (I)*, p. 184, para. 121.

[83] "Netanyahu brandishes map of Israel that includes West Bank and Gaza at UN speech", *The Times of Israel*, 22 Sept. 2023, https://www.timesofisrael.com/liveblog_entry/netanyahu-brandishes-map-of-israel-that-includes-west-bank-and-gaza-at-un-speech/. See also CR 2024/4, p. 53, para. 13.

[84] See Written Statement of Belize, para. 47; Report of the Secretary-General under General Assembly resolution 2254 (ES-V) relating to Jerusalem, UN doc. A/6793, S/8146, 12 Sept. 1967, paras. 39-40; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, UN doc. A/73/447, 22 Oct. 2018, para. 34; "The Status of Jerusalem: Prepared for, and under the guidance of, the Committee on the Exercise of the Inalienable Rights of the Palestinian People", 1997, p. 15, Map 4, un.org/unispal/wp-content/uploads/2016/07/The-Status-of-Jerusalem-Engish-199708.pdf.

[85] See Written Statement of Belize, paras. 49-52; Written Statement of Ireland, paras. 17-41.

[86] See Written Statement of Belize, paras. 35-37. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, *I.C.J. Reports 2004 (I)*, pp. 183-184, para. 120; Fourth Geneva Convention, 12 Aug. 1949, entered into force 21 Oct. 1950, 75 *UNTS* 287, Art. 49 (6).

[87] End-of-Mission Statement of the UN Special Committee to Investigate Israeli Practices, 16 June 2023, https://www.ohchr.org/en/statements/2023/06/end-mission-statement-un-special-committee-investigate-israeli-practices; Letter from Israeli Cabinet Secretary to Adalah – The Legal Center for Arab Minority Rights in Israel, 19 June 2023, https://www.adalah.org/en/content/view/10843; CR 2024/4, pp. 62-63, paras. 5-7. See also Written Statement of Belize, para. 51; UNHRC res. 52/35, UN doc. A/HRC/RES/52/35, 4 Apr. 2023, preambular para. 13; Written Statement of Israel, p. 3 (second para.).

26. These statements are matched by Israel's transfer of administrative powers relating to the entirety of the West Bank from its military to its civilian authorities[88]. That is a clear manifestation of the progression from occupation to annexation.

27. All of this is in the context of Israel refusing to recognize the existence of the Palestinian people as a people, or their right to self-determination and Statehood[89].

28. These circumstances have led United Nations bodies and special procedures correctly to conclude that Israel is responsible for *de facto* annexation of the entire West Bank, and not only of the part of it that the Oslo Accords label Area C[90]. Area C constitutes more than 60 per cent of the West Bank and as the Court has seen from the fourth map that Palestine's Foreign Minister displayed[91], it is clear that Areas A and B comprise a collection of isolated enclaves that are not viable without Area C.

3. Legal consequences

A. Consequences for Israel

29. Turning to the heart of the questions posed to the Court, which is legal consequences[92], Israel's occupation and annexation of Palestinian territory are continuing wrongful acts[93]. Israel is thus under an obligation to cease those acts[94].

30. Whether in respect of occupation or annexation, the conduct that constitutes a breach of the prohibition of the use of force is Israel's presence in or exercise of effective control over Palestinian territory.

---

[88] End-of-Mission Statement of the UN Special Committee to Investigate Israeli Practices, 16 June 2023, https://www.ohchr.org/en/statements/2023/06/end-mission-statement-un-special-committee-investigate-israeli-practices. Cf. Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907, Art. 42.

[89] "Netanyahu tells US he opposes creation of Palestinian state after Gaza war", *The Guardian*, 18 Jan. 2024, https://www.theguardian.com/world/2024/jan/18/netanyahu-tells-us-opposes-palestinian-state-after-gaza-war. See also Written Statement of Belize, para. 20.

[90] See Written Statement of Belize, para. 50 and para. 56 *(a)*, footnote 162.

[91] CR 2024/4, p. 53, para. 12.

[92] See generally Written Statement of Belize, paras. 74-81 and 102-103.

[93] ARSIWA, with commentaries, *YILC*, 2001, Vol. II, Part II, UN doc. A/CN.4/SER.A/2001/Add.1 (Part 2), Commentary to Art. 14, para. 3.

[94] ARSIWA, Art. 30 *(a)*; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, *I.C.J. Reports 2004 (I)*, p. 197, para. 150.

31. To cease that wrongful conduct, Israel must entirely withdraw from Palestinian territory. That includes withdrawing its civilian population from the West Bank, ceasing the construction and expansion of settlements there, and dismantling existing settlements.

32. It must also repeal or render ineffective all legislative and regulatory acts, policies and practices that contribute to its exercise of effective control over Palestinian territory[95].

33. The Court could also usefully indicate that the establishment of settlements has had no legal effect and does not give Israel any rights in respect of the land on which they are located[96].

34. As to the important question of timing, the Court has previously recognized that the obligation of cessation requires immediate action[97].

35. In the *Wall* Advisory Opinion, the Court drew attention to the need for efforts to initiate negotiations[98]. Israel interprets this to mean that it can remain in Palestinian territory until a negotiated solution to the entire conflict is reached[99]. Belize's Written Comments are devoted to explaining why that is incorrect[100]. The core difficulty is that Israel is not entitled to remain in breach of peremptory norms pending a negotiated solution[101]. It is therefore crucial that the Court specify that Israel is required to withdraw from the Palestinian territory immediately, unconditionally and totally[102].

---

[95] See also Written Statement of Belize, paras. 78, 98 and 102-103.

[96] See *ibid.*, paras. 41 and 95 *(c)*.

[97] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 58, para. 133 (1); *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, *Merits*, *Judgment*, *I.C.J. Reports 1986*, p. 149, para. 292 (12); *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*, *Judgment, I.C.J. Reports 2022*, p. 340, para. 195.

[98] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, *I.C.J. Reports 2004 (I)*, p. 201, para. 162.

[99] Written Statement of Israel, pp. 3 (second para.) and 4 (third para. and fn. 9), and Ann. 12, para. 39.

[100] See Written Comments of Belize.

[101] See *ibid.*, paras. 64-66 and 71-73.

[102] UNGA res. 35/207, UN doc. A/RES/35/207, 16 Dec. 1980, para. 1.

B. Consequences for States other than Israel

36. As for States other than Israel[103], they are under a positive "obligation to recognize the illegality" of Israel's continued presence in and control over the Palestinian territory[104].

37. States also have duties not to assist Israel to maintain a situation that is in breach of peremptory norms[105] and to regulate private actors to ensure that their conduct does not support Israel's illegal practices[106]. Fulfilment of those duties includes weapons and their components not being provided to Israel in the knowledge that they will likely be used to perpetuate its control over Palestinian territory[107].

38. President and Members of the Court, thank you for your attention, those are the submissions of Belize.

The PRESIDENT: I thank the delegation of Belize for its presentation. I invite the next participating delegation, Bolivia, to address the Court, and invite His Excellency Mr Roberto Calzadilla Sarmiento to take the floor. Your Excellency, you have the floor.

Mr CALZADILLA SARMIENTO:

1. Mr President, Members of the Court, it is an honour to appear before you on behalf of the Plurinational State of Bolivia to address an issue of vital importance for the international community. Today, the world looks to this Court, the principal judicial body of the United Nations, which is empowered to determine the legal consequences arising from Israel's continued violations of the right of the Palestinian people to self-determination; from its prolonged acts of occupation; from its continued settlements and annexation of Palestinian territory, including measures which alter the demographic composition, character and status of the holy city of Jerusalem; and the adoption by

---

[103] See generally Written Statement of Belize, paras. 82-89 and 104.

[104] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 54, para. 119. See also Written Statement of Belize, para. 104.

[105] ARSIWA, Article 41 (2); *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 54, para. 119. See also UNSC res. 465, UN doc. S/RES/465, 1 Mar. 1980, para. 7; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, *I.C.J. Reports 2004 (I)*, pp. 191-192, para. 134 (and cross-referring to pp. 183-184, para. 120).

[106] See Written Statement of Belize, paras. 87-88.

[107] See *Oxfam Novib et al* v. *The Netherlands*, Gerechtshof Den Haag, C/09/657026 KG ZA 23-991, 12 Feb. 2024.

Israel of related discriminatory legislation and measures, as requested by the General Assembly of the United Nations.

2. Bolivia considers Israel's ongoing illegal occupation to be in violation of international law. In particular, Bolivia considers that Israel's illegal occupation infringes on the right of the Palestinian people to self-determination; that, through its prolonged occupation, settlements and annexation of the Palestinian territory occupied since 1967, it violates the fundamental principle of international law proscribing the acquisition of territory by force; and that it violates the international prohibition of racial discrimination and the establishing of a system of apartheid.

3. Bolivia considers that the discriminatory measures of a colonial nature imposed by Israel prior to the legal status of the occupation, are aimed at the dispossession of the Palestinian population and to the denial of their rights by altering the demographic composition, character and status of the city of Jerusalem. The ongoing situation results in consequences, and obligations, for all States and for the United Nations.

4. Bolivia considers that the Court possesses jurisdiction to give the advisory opinion requested by the General Assembly, based on the Court's own settled jurisprudence.

5. In this context, suffice it to recall that the Court confirmed in 2004 that, "[w]hatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task, namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law"[108]. It is in this sense that the Court, as the highest instance of international justice, must clarify and affirm the obligations and rights of the States that international norms have established, and that have now been requested in this advisory opinion as a guide for the actions and powers of the United Nations General Assembly and the States.

RIGHT TO SELF-DETERMINATION

6. The right to self-determination is enshrined in Article 1 (2) of the United Nations Charter. In 1970, General Assembly resolution 2625, confirmed, as put by this Court in 2019, the normative character of its right under customary international law. Resolution 2625, the Friendly Relations

[108] *Wall* Advisory Opinion, p. 136, para. 41, citing *Conditions of Admission of a State to Membership in the United Nations, (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, pp. 61-62.

declaration, confirmed that the duty of each State is "to refrain from any forcible action which deprives peoples . . . of . . . their right to self-determination and freedom and independence" and to "promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples".

7. The continued siege of Palestinian people through Israel's illegal occupation, annexation and colonization since 1948 has systematically and forcibly discriminated, displaced and fragmented the Palestinian people by deliberately denying them their recognized inalienable right to self-determination and their right to return to their homeland, where the State of Israel is now illegally established. The illegal Israeli occupation of the Palestinian territories constitutes a denial of this right and, in this sense, Israel violates the right enshrined under international law.

8. Almost 20 years ago, in the Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, this Court reminded Israel of its obligations under international law, reaffirming that it was "bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law".

9. Bolivia considers that the General Assembly resolution 15 of August 2004 expands on fundamental aspects of this Court's Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, including as regards East Jerusalem and its surroundings. Accordingly, they form part of the context to be considered in relation to the legal consequences of Israel's policies and practices in the Occupied Palestinian Territory which we are analysing during this period at the Court.

10. Thus, Mr President, Members of the Court, Bolivia contends that by continuously depriving and denying the Palestinian people's right to self-determination for 75 years, Israel is in clear breach of its international obligations.

ILLEGAL ACQUISITION AND OCCUPATION OF TERRITORY BY ISRAEL

11. Mr President, Members of the Court, Article 2 of the United Nations Charter contains a general rule against the unlawful use of force and states that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political

independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". The prohibition of aggression is binding on all States, and it constitutes a peremptory norm of international law.

12. On 22 November 1967, the Security Council unanimously adopted resolution 242 (1967), in which it insisted on the inadmissibility of the acquisition of territory by war and called for the withdrawal of Israeli armed forces.

13. By the same token, through resolution 252 of 21 May 1968, the Security Council reaffirmed the point, considering that "all legislative and administrative measures and actions adopted by Israel, including the expropriation of land and property therein, that tend to change the legal status of Jerusalem are invalid and cannot change that status".

14. It is imperative to recall that the Security Council urged Israel to scrupulously observe the provisions of the Geneva Conventions and international law on military occupation, further reiterating that the Geneva Convention of 12 August 1949 on the Protection of Civilians in Time of the war applied to the Arab territories occupied by Israel since 1967, including Jerusalem.

15. In particular, Article 49 of the Fourth Geneva Convention protects against colonization of occupied territory by providing that "[t]he occupying Power may not carry out the evacuation or transfer of any part of its own civilian population to the territory occupied by it".

16. Yet, the transfer of 750,000 Israeli settlers and the building of settlements in East Jerusalem and the rest of the West Bank have been deliberately carried out with the intention of acquiring the territory through *de facto* and *de jure* annexation, including through colonization, confinement and fragmentation of the occupied Palestinian territories.

17. Not only the Security Council and the Human Rights Council, but also the General Assembly, reaffirmed the principle of inadmissibility of the acquisition of territory by force, condemned and rejected Israeli measures aimed at altering the demographic composition, the character and status of Jerusalem and the Occupied Palestinian Territory. States in their international relations must refrain from resorting to the threat or use of force against the territorial integrity or political independence of any State or coerce another State to subordinate it in the exercise of its sovereign rights and obtain advantages of any type.

18. Bolivia considers that Israeli colonial settlements in the occupied Palestinian territory, including East Jerusalem, the West Bank, the Gaza Strip and the Syrian Golan, have been built by force, through the imposition of institutionalized, racially discriminatory régimes (including apartheid) and through the denial of the exercise of the right to self-determination in contravention of international law. As a result, they must be considered illegal. Similarly, Israel's occupation results from an act of aggression and, as such, it must be considered illegal under both *jus in bello* and *jus ad bellum*.

19. The Committee on the Exercise of the Inalienable Rights of the Palestinian People, in its 2023 study of the legality of the Israeli occupation, endorsed the growing body of evidence that Israel's belligerent occupation of the Palestinian territory is illegal in so far as it denies the inalienable right of the Palestinian people to self-determination, including their right to an independent State of Palestine.

20. The occupying Power lacks the right of sovereignty over the occupied territory, as confirmed by the principle of permanent inviolability of the rights of the protected population in the event of annexation, which is enshrined in Article 47 of the Fourth Geneva Convention of 1949. The occupying Power cannot alienate the land or the properties of the occupied State.

21. Thus, Bolivia considers that the Israeli colonialist occupations are clearly illegal according to *jus in bello*, and are illegal occupations because there is a violation of the normative order and the legal régime of the occupation such as the principles of temporality, the prohibition of annexation by force, serious violations of human rights and the right to self-determination, inalienability of sovereignty and the prohibition of racial discrimination, apartheid and, more recently, genocide.

HUMAN RIGHTS, RACIAL DISCRIMINATION AND APARTHEID

22. Mr President, Members of the Court, Bolivia observes with concern that Israel's actions of persecution, oppression and domination of the Palestinian people have been accompanied by systematic violations of fundamental human rights that have been observed by both the Security Council and the Human Rights Council. This includes a system of racial discrimination and a system of apartheid that has not abated despite repeated condemnations from the international community.

23. The Human Rights Council has repeatedly called for the immediate protection of Palestinian civilians in the Occupied Palestinian Territory in accordance with human rights standards and international humanitarian law. It has further stressed all policies and measures adopted by Israel to limit access of Palestinians to their holy sites, in particular in occupied East Jerusalem, on the basis of their national origin, religion, birth, sex or any other status, violate the relevant provisions set forth in the Universal Declaration of Human Rights, the International Covenant on Civil Rights and Political Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Fourth Geneva Convention on the Protection of Civilians in Times of War; these measures must cease. "Israel is under an obligation to cease its wrongful conduct".

24. The international community has repeatedly condemned Israel's actions, including through the United Nations, in so far as they hinder the exercise of the Palestinian right to self-determination. These have included the construction of illegal settlements in occupied Palestinian territories, the construction of the separation wall in the West Bank, and other measures that affect the daily lives of Palestinians. Bolivia has consistently joined these condemnations.

25. Israel's occupation, both in its means and its purpose, does not fall within the framework of legality established in international law. The *de facto* annexation of territory imposes restrictions on where Palestinians can live and travel, as well as a racially discriminatory legal and administrative régime that favours Israeli settlers and deprives Palestinians of their most basic rights.

26. The conclusion is unavoidable that Israel has used its prolonged occupation as a pretext to pursue its illegal objective of annexing the occupied Palestinian territories, in violation of the Charter of the United Nations. Therefore, the Israeli occupation must be considered illegal in its entirety.

27. Mr President, Members of the Court, the policies and practices of Israeli occupation in Palestinian territory are illegal and have legal consequences with obligations for Israel and for other States and the United Nations, since they violate the rights of the Palestinians as a people and of Palestine as a State and therefore they both demand the complete and immediate cessation of these illicit international acts.

CONSEQUENCES FOR ISRAEL

28. Bolivia considers that Israel, as the State responsible for these violations of international law, must cease the *de jure* and *de facto* acts and policies that prevent the exercise of the right to self-determination of the Palestinian people and fulfil its obligation to end the situation of illegal occupation and its discriminatory policies and practices designed and maintained to establish dominance in a peaceful, immediate and unconditional manner. Therefore, Israel is also obliged to stop development of the atrocities of genocide committed more recently in Gaza and to comply with the provisional measures set forth in the Order of this Court on 26 January 2024.

29. Israel must also comply with its international obligations and stop continued Israeli settlement activities that are jeopardizing the viability of the two-State solution based on the 1967 lines and retract Israel's announcement in February of last year of a further construction and expansion of settlements and the "legalization" of advanced settlements. Israel must cease the armed occupation and cancel the annexation of Palestinian territories and reverse illegal settlements by establishing reparation and compensation. As the occupying Power, it must assume responsibility for 76 years of occupation and for the siege imposed on the Gaza Strip and the ongoing atrocities of crimes of genocide.

30. Bolivia considers that, within the framework of the resolutions mentioned in the advisory opinion brief, Israel must immediately and completely put an end to all settlement activities in the Occupied Palestinian Territory, and reaffirms that the establishment of settlements by Israel in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a manifest violation of international law and a major obstacle to the achievement of the two-State solution and a comprehensive, just and lasting peace.

CONSEQUENCES FOR OTHER STATES

31. Mr President, Members of the Court, the international community has, including through the United Nations, repeatedly condemned and must continue to condemn Israel's actions that hinder the exercise of the Palestinian right to self-determination, such as the construction of illegal settlements in occupied Palestinian territories, the construction of the separation wall in the West Bank, and other discriminatory measures that affect the daily lives of Palestinians.

32. In this context, States and international organizations are under an obligation to prevent and take measures and co-operate to prevent Israel from continuing to violate the Palestinian right to self-determination and its discriminatory practices of domination and apartheid and to avoid any act of support for the genocide of the Palestinian people. These measures may include diplomatic actions, economic sanctions, political pressure and legal measures.

33. States have the obligation to contribute with separate or joint actions to the State of Palestine's exercise of its right to self-determination. States parties to the Genocide Convention also have clear obligations to act to prevent, suppress and punish genocide, employing "all means reasonably available to them, so as to prevent genocide so far as possible within the limits permitted by international law", also clarified in the 2024 *Ukraine* v. *Russia* case.

34. The Plurinational State of Bolivia considers that the Presidential Declaration of the Security Council of 20 February 2023 firmly underlines the need for all parties to comply with their international obligations and commitments. In this sense, States have the obligation not to recognize the illegal situation resulting from the acts of occupation of the territories of Palestine by Israel, the impediment to the right to self-determination of the Palestinian people, the prevention of discrimination, apartheid and genocide and avoid any act of complicity and action that contributes to the maintenance of these illegal situations.

35. Bolivia believes that all States must firmly oppose all unilateral measures that impede peace, including, among others, to refrain the arms trade, the construction and expansion of Israeli settlements, the confiscation of Palestinian lands and the "legalization" of settlements, the demolition of Palestinian homes and the displacement of Palestinian civilians. States have to reject the expansionist and colonialist policies that Israel has been developing for half a century, promoting a system of apartheid and constant suffocation and genocide against the Palestinian people, in violation of international law, the Charter of the United Nations and the respective resolutions approved by the Security Council, the Human Rights Council and the General Assembly.

36. As a pacifist country, the Plurinational State considers that the only alternative to guarantee a just and lasting peace in the conflict between Israel and Palestine must be the obligation for all States to contribute to dialogue and negotiation, with clear expressions of political will from both parties, to achieve a two-State solution, consolidating a free, sovereign and independent Palestinian

State as it is established with the pre-1967 international borders, with East Jerusalem as its capital, in accordance with the relevant Security Council and the General Assembly resolutions. Following the principles of international law and peace, Bolivia recognized Palestine as an independent and sovereign State on 17 December 2010 along the 1967 border because it meets all the traditional criteria for statehood.

37. All States have common but differentiated responsibilities and the obligations to provide solidarity and assistance to the Palestinian people. Accordingly, and despite its economic limitations, the Plurinational State of Bolivia, is making an important effort by sending a contingent of humanitarian aid, which we hope can reach its destination without objection from the occupying Power.

CONSEQUENCES FOR THE UNITED NATIONS

38. Bolivia further considers that the Security Council, the Human Rights Council, the United Nations General Assembly and the International Court of Justice, as well as the relevant treaty bodies, must continue to call on Israel to comply with its obligations under international law, to cease the expansion of illegal settlements, and guarantee the full exercise, enjoyment and respect of the human rights of the Palestinian population.

39. Similarly, the United Nations has the obligation to implement all relevant resolutions and other necessary measures and additional resolutions to bring to an end to Israel's illegal occupation and the present system of racial discrimination and apartheid.

40. Mr President, Members of the Court, every day we witness atrocities and an increasing irreparable loss of lives of the Palestinian people; the news documents daily the suffering, we know not what legal consequences these international crimes may yield, as they continue notwithstanding the Order on provisional measures of 26 January 2024.

41. With its advisory opinion, the Court has the power to establish what these consequences are.

42. Mr President, Members of the Court, that concludes my statement on behalf of the Plurinational State of Bolivia. I should like to thank the Court for its careful attention.

The PRESIDENT: I thank the delegation of Bolivia 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 3.55 p.m. to 4.10 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now call upon the delegation of Brazil to address the Court and invite Ms Maria Clara Paula de Tusco to take the floor.

Ms DE TUSCO:

1. Mr President, distinguished Members of the Court, it is an honour for me to speak on behalf of Brazil before the International Court of Justice, the main judicial organ of the United Nations.

2. We are gathered here to fulfil another stage of a mandate conferred upon this Court by the United Nations General Assembly on 30 December 2022, when resolution 77/247, entitled "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem", was adopted. Through that resolution, the General Assembly tasked this Court with providing an advisory opinion in response to two main questions:

> "What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?"; and
>
> "How do the policies and practices of Israel . . . affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?"

3. Brazil's decision to participate in this proceeding, presenting a written statement and now speaking at this public hearing, stems from the country's historical commitment to abide by international law, to foster multilateralism and to promote the peaceful settlement of disputes.

4. The Israeli-Palestinian question has been one of the most pressing unresolved conflicts on the international agenda for decades. Israel's occupation of Palestinian territories, persisting since 1967, in violation of international law and numerous resolutions by the United Nations General

Assembly and Security Council, cannot be accepted, let alone normalized, by the international community.

5. From Brazil's perspective, the current request for an advisory opinion, addressed to the highest judicial body in the United Nations system, could not be more timely. Brazil believes that the Court's pronouncement is necessary so that not only Israel, as the occupying Power, but also all countries seeking to align their conduct within the limits of international law and justice can have clarity on the legal implications of Israel's occupation and its policies and practices in the Palestinian occupied territories.

6. It is not surprising, therefore, that over fifty countries have decided to participate in the proceedings concerning this advisory opinion.

7. Mr President, esteemed judges, the importance of the matter and the gravity of the situation in the Palestinian occupied territories were indisputable even before 7 October 2023. The tragic events of that date, and the disproportionate and indiscriminate military operations that followed, however, make it glaringly clear that the mere management of the conflict cannot be considered an option, and that a two-State solution, with an economically viable Palestinian State living side by side with Israel, is the only way to provide peace and security for Israelis and Palestinians.

8. We know that the current request for an advisory opinion has a defined, restricted scope, excluding political considerations, as well as the legal definition of the events of 7 October and subsequent military operations. The consequences of these recent events notwithstanding, intrinsically linked to the Israeli occupation of Palestine, compels Brazil to mention them at this public hearing.

9. I do not intend today to delve into the legal considerations that Brazil presented in its Written Statement in July 2023, already well known to this Court. At this stage, I would like to highlight only its main points:

COURT JURISDICTION

10. There seems to be no doubt, according to Article 65 (1) of the ICJ's statute, that this Court is competent to issue the advisory opinion commissioned by the General Assembly, an equally competent body to request it. The subject of the consultation is intrinsically linked to relevant

principles of international law, such as the right to self-determination and the prohibition of the annexation of territory by force, making the opinion of this judicial organ even more crucial for the entire international community.

PEOPLES' RIGHT TO SELF-DETERMINATION

11. The right of peoples to self-determination is enshrined in international law, including in the Charter of the United Nations, and widely recognized by the United Nations General Assembly. This Court, and the General Assembly, have expressly recognized that the existence of the Palestinian people, as much as their right to self-determination, is indisputable. Brazil would appreciate that the Court, within the scope of the present advisory opinion, could highlight the principled position that the Israeli occupation of Palestinian territories violates the right of the Palestinian people to self-determination.

OCCUPATION, SETTLEMENTS AND ANNEXATION

12. In 1967, Security Council resolution 242 emphasized the inadmissibility of acquiring territory by force and directed Israel to withdraw its troops from the then recently occupied Palestinian territory. However, the occupation persists to this day and has been aggravated by the construction of the separation wall in Palestinian territory, the building of illegal settlements in the West Bank and the annexation of East Jerusalem. As recognized by the Court in the *Wall* Advisory Opinion, Israel has continued to have the status of occupying Power. The prolonged occupation, settlement and annexation of Palestinian territories, including measures aimed at altering the demographic composition, character and status of these territories, including Jerusalem, violate relevant rules of international law.

PROHIBITION OF DISCRIMINATION

13. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights — foundational instruments of the international human rights protection system — guarantee the right of all individuals to be treated equally, without discrimination based on race, colour, gender or religion. By extending its jurisdiction over the Occupied Palestinian Territory and establishing two distinct legal systems — one applied to Israeli settlers and another imposed, under

military rule, to Palestinians — Israel is practising discrimination against the Palestinian population, while impairing the recognition, enjoyment or exercise, on an equal footing, of their human rights and fundamental freedoms. This differential treatment is evident and well documented and should also be addressed by the Court.

LEGAL STATUS OF THE OCCUPATION

14. On the legal status of the occupation, Brazil expects that the Court reaffirms that the Israeli occupation of Palestinian territories is illegal and violates international obligations through a series of actions and omissions by Israel. The confiscation of Palestinian lands, the destruction of Palestinian properties, the construction of Israeli settlements and of the wall, and the adoption of measures aimed at changing the demographic composition of areas within Palestinian territories must all be taken into account by the Court. Those persistent practices are tantamount to annexation.

LEGAL CONSEQUENCES

15. On the legal consequences: the practices described above, which have persisted for decades, result in obligations for Israel, the occupying Power, and for all other States seeking to conduct themselves in accordance with international law, as follows.

Israel

Cessation and non-repetition

16. First of all, Israel must put an end to the occupation of Palestine. Its primary obligation is to cease and not repeat the acts and omissions by which it occupies and prolongs the occupation of Palestinian territories.

Reparations

17. Secondly, according to the jurisprudence of this Court, a State violating principles and rules of international law must provide due reparation.

Other States

18. Thirdly, the illegality of the situation creates obligations not only on the occupying Power but also on all States.

Obligation of non-recognition

19. The main obligation is that all States must abstain not only from formal recognition of this situation but also from acts that could imply such recognition.

Obligation of non-assistance

20. No State should collaborate with Israeli actions or initiatives related to the illegal occupation of Palestinian territories.

Obligation of co-operation

21. Finally, States must co-operate to bring an end through lawful means to the occupation at the earliest.

CONCLUSION

22. Mr President, distinguished Members of the Court, in concluding my statement, I would like to highlight that Brazil is fully committed to complying with these obligations. We have been consistently advocating for a two-State solution, allowing for the creation of an independent, sovereign and economically viable Palestinian State, coexisting with Israel in peace and security within mutually agreed and internationally recognized borders, which includes the Gaza Strip, the West Bank and East Jerusalem as its capital.

23. It was not without reason that Brazil, in December 2010, extended recognition to the State of Palestine. It was not without reason either that Brazil enrolled to provide its contributions in the context of the present request for an advisory opinion from the Court.

24. By providing its advisory opinion on the legal consequences of Israel's practices and policies in the occupied Palestinian territories, the Court will not only contribute to upholding international law but also to the resolution of one of the most pressing issues on the international peace and security agenda. Brazil strongly believes in dialogue, peace, justice and multilateralism, and highly values the work of this International Court of Justice. Thank you.

The PRESIDENT: I thank the delegation of Brazil for its presentation. Let me now call upon the next participating delegation, Chile, to address the Court, and invite Ms Ximena Fuentes Torrijo to the podium.

Ms FUENTES TORRIJO:

1. Mr President, Members of the Court, it is an honour for me to appear before you as the Representative of Chile in these advisory proceedings.

2. The two questions submitted by the General Assembly to the Court are of the utmost importance to assist the organs of the United Nations in fulfilling their responsibility under Article 1, paragraphs 1 and 2, of the Charter of the United Nations, namely "to take effective collective measures for the prevention and removal of threats to the peace"; to bring about "adjustment or settlement of international disputes or situations which might lead to a breach of peace"; and "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take appropriate measures to strengthen universal peace".

3. The situation that affects the Occupied Palestinian Territory may only find a satisfactory solution on the basis of compliance with the Charter of the United Nations, international human rights law and international humanitarian law. The right to self-determination, to which the Palestinian people living in the Occupied Palestinian Territory are entitled, plays a central role in the resolution of this long-standing conflict. It is our position that the Court should provide a substantive advisory opinion that may contribute to the strengthening of peaceful relations between Israel and Palestine, by clarifying the applicable international law and the legal consequences arising from the violation of those rules.

4. Chile appears today before the Court in response to the invitation extended to all Member States of the United Nations, to furnish information on the questions submitted by the General Assembly. Two main considerations have prompted Chile to participate in these advisory proceedings. First, Chile, as a Member of the United Nations, has the responsibility to contribute to strengthening the rule of law in the international community. The questions submitted by the General Assembly touch upon the basic principles of the rule of law, that is to say the principle of the supremacy of law above the exercise of power and the principle of accountability.

5. Second, Chile has continuously supported the self-determination of the Palestinian people and the two-State solution. Through decades of participation in the multilateral fora, Chile has consistently called all parties to comply with their obligations under international law, and to put an

end to policies and practices that endanger the peace process[109]. All this, in a domestic setting where Chile is home to a large Palestinian community — the largest outside the Middle East — and to an important Jewish community — the third in South America. In 2011, the Chilean Government led by former President Sebastián Piñera recognized the State of Palestine, and in 2012 Chile co-sponsored General Assembly resolution 67/19, which accorded Palestine non-member observer State status in the United Nations.

6. Chile would like to see the implementation of the two-State solution, within internationally recognized and secure boundaries, and it is convinced that these advisory proceedings will assist in that process. Why? Because under the current status quo there is no solution in sight. An advisory opinion may contribute to the process of changing the status quo, putting an end to the 56-year occupation of Palestinian territory, and to the realization of the Palestinian people's self-determination.

7. In this presentation Chile will develop three points:

---

[109] Indeed, Chile has systematically co-sponsored and/or voted in favour of relevant resolutions of the UN General Assembly and the Human Rights Council. This includes UNGA resolutions 78/78 (2023); 78/192 (2023); 77/208 (2022); 77/247 (2022); 77/126 (2022); 76/82 (2021); 76/150 (2021); 75/98 (2020); 75/97 (2020); 75/172 (2020) and HRC resolutions 52/35 (2023); 52/34 (2023); 52/3 (2023); 49/29 (2022); 49/28 (2022); 49/4 (2022); 46/26 (2021); 46/25 (2021); 46/3 (2021); 43/33 (2020); 43/32 (2020); 43/31 (2020); 43/3 (2020); S-28/1 (2018); S-21/1 (2014); S-12/1 (2009); S-9/1 (2009), among many others. Chile has also issued several statements calling for all parties to comply with international law. See: Ministerio de Relaciones Exteriores, 'Comunicado de Prensa' (13 Feb. 2024) https://minrel.gob.cl/noticias-anteriores/comunicado-de-prensa-13-02-2024; 'Comunicado sobre situación en Medio Oriente' (13 Oct. 2023) https://minrel.gob.cl/noticias-anteriores/comunicado-sobre-situacion-en-medio-oriente; 'Comunicado de Prensa' (7 Oct. 2023) https://minrel.gob.cl/noticias-anteriores/comunicado-de-prensa-22; 'Comunicado de Prensa' (12 May 2023) https://minrel.gob.cl/noticias-anteriores/comunicado-de-prensa-14; 'Chile manifiesta su preocupación por el recrudecimiento de la violencia en el Medio Oriente' (24 Feb. 2023) https://minrel.gob.cl/noticias-anteriores/chile-manifiesta-su-preocupacion-por-el-recrudecimiento-de-la-violencia; 'Comunicado Conjunto de los Gobiernos de Argentina, Brasil, Chile y México' (17 Feb. 2023) https://minrel.gob.cl/noticias-anteriores/comunicado-conjunto-de-los-gobiernos-de-argentina-brasil-chile-y-mexico; 'Gobierno de Chile condena atentado terrorista en Sinagoga de Neve Yaakov, Jerusalén Este' (28 Jan, 2023) https://minrel.gob.cl/noticias-anteriores/gobierno-de-chile-condena-atentado-terrorista-en-sinagoga-del-barrio; 'Gobierno de Chile celebra acuerdo de alto el fuego alcanzado por Palestina e Israel' (26 May 2021) https://minrel.gob.cl/noticias-anteriores/gobierno-de-chile-celebra-acuerdo-de-alto-el-fuego-alcanzado-por; 'Comunicado de prensa' (29 Jan. 2020) https://minrel.gob.cl/minrel/noticias/comunicado-de-prensa-10; 'Chile manifiesta preocupación por los hechos violencia ocurridos en la zona de frontera entre Israel y la Franja de Gaza' (13 Nov. 2018) https://minrel.gob.cl/minrel/noticias-anteriores/chile-manifiesta-preocupacion-por-los-hechos-violencia-ocurridos-en-la; 'Comunicado sobre situación en la Franja de Gaza' (14 May 2018) https://minrel.gob.cl/minrel/noticias-anteriores/comunicado-sobre-situacion-en-la-franja-de-gaza; 'Chile lamenta los hechos de violencia acaecidos en la franja de Gaza' (3 Apr. 2018), https://minrel.gob.cl/minrel/noticias-anteriores/chile-lamenta-los-hechos-de-violencia-acaecidos-en-la-franja-de-gaza; 'Chile manifiesta preocupación por decisión de Estados Unidos de reconocer a Jerusalén como capital de Israel' (6 Dec. 2017) https://www.minrel.gob.cl/comunicado-de-prensa/minrel_old/2017-12-06/195229.html; 'Comunicado de Prensa' (9 Jan. 2017) https://www.minrel.gob.cl/comunicado-de-prensa/minrel_old/2017-01-09/120915.html; 'Comunicado de prensa sobre la situación en Gaza' (21 July 2014), https://www.minrel.gob.cl/comunicado-de-prensa-sobre-la-situcion-en-gaza/minrel_old/2014-07-21/100756.html; 'Chile condena ataques aéreos a la Franja de Gaza y el lanzamiento de misiles hacia Israel' (15 Mar. 2012) https://www.minrel.gob.cl/chile-condena-ataques-aereos-a-la-franja-de-gaza-y-el-lanzamiento-de/minrel_old/2012-08-31/102247.html, all hyperlinks accessed 18 February 2024.

(i) First, the absence of compelling reasons to decline rendering the advisory opinion. It is a false dilemma that such opinion may impede negotiations between Israel and Palestine.

(ii) Second, Chile's views on question *(a)*, regarding Israel's violation of the inalienable right of the Palestinian people to self-determination and other rules of international law, and the responsibility that arises thereof.

(iii) Third, Chile's views on question *(b)*, regarding the illegal status of the occupation, and the consequence that necessarily follows, namely, the obligation to put an end to the occupation.

I. JURISDICTION AND THE ABSENCE OF COMPELLING REASONS FOR THE INTERNATIONAL COURT OF JUSTICE TO DECLINE GIVING THE ADVISORY OPINION

8. Moving to the first point, it is Chile's position that the Court has jurisdiction to give the requested advisory opinion and that there are no compelling reasons for the Court to refuse to do so.

9. As already stated in its written statements, Chile considers that the fact that a legal question may also involve certain political aspects[110] or the fact that the parties concerned should pursue negotiations[111], does not bar the Court from its jurisdiction. Indeed, complex situations, such as the Israeli-Palestinian conflict, are precisely the ones that can benefit the most from a clarification of the applicable law by this Court[112].

10. With regard to the principle of judicial propriety, which has been a matter of some debate in these proceedings, Chile underscores the fact that, by their very nature, advisory opinions do not resolve contentious disputes, and does not share the view of a few other States that rendering an advisory opinion in this case would be at odds with the agreed negotiation framework dealing with the ultimate status of the Occupied Palestinian Territory.

11. While it is true that the Security Council has endorsed a political process based on a negotiation framework for the resolution of the Israeli-Palestinian conflict, it is also true that the Security Council itself has condemned

---

[110] *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion, I.C.J. Reports 1996 (I)*, para. 13; *Wall* Advisory Opinion, para. 41; *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, para. 37.

[111] *Aegean Sea Continental Shelf (Greece* v. *Turkey)*, *Judgment, I.C.J. Reports 1978*, para. 29.

[112] *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, para. 33.

> "all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, 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"[113].

12. Chile recalls that this Court, in the *Namibia* Advisory Opinion, was clear in stating that an international instrument, such as a Security Council resolution, "has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation"[114]. The Court has also noted that resolutions of the United Nations organs need to be analysed "having regard to the terms of the resolution to be interpreted, the discussions leading to it . . . and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council"[115].

13. Thus, to argue that Security Council resolutions supporting the need for a negotiated two-State solution impede the exercise of the Court's advisory jurisdiction is simply untenable. Indeed, it is quite clear from the language used by those resolutions and the discussions leading to their adoption, that any such negotiated solution precisely requires the cessation and non-recognition of Israel's illegal activities in the Occupied Palestinian Territory. It is difficult to understand how a legal opinion rendered by this Court, the purpose of which is precisely to determine the legal consequences of Israel's behaviour in the Occupied Palestinian Territory, might be an obstacle for a prospective negotiated solution.

14. In addition, one should not lose sight of the fact that ongoing or prospective negotiations do not imply a suspension of the functions and powers of the Security Council or the General Assembly. Indeed, the purpose of the request for an advisory opinion in this case is precisely to assist the General Assembly in the exercise of its functions with regard to the situation in the Occupied Palestinian Territory. It is important to bear in mind that the General Assembly, in exercising its powers, can issue recommendations, the content of which is not restricted to calling the parties to agree on a negotiated solution.

---

[113] UNSC resolution 2334 (2016) of 23 December 2016. See also UNSC resolutions 446 (1979) of 22 Mar. 1979; 452 (1979) of 20 July 1979; 465 (1980) of 1 Mar. 1980; 478 (1980) of 20 Aug. 1980.

[114] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 31, para. 53.

[115] *Ibid.*, p. 53, para. 114.

15. In conclusion, Chile strongly supports the view that, by giving the requested advisory opinion, the Court will be acting within the scope of its advisory function, fulfilling its duty to provide the legal assistance that the General Assembly requires to exercise its power in the context of a long-standing conflict.

16. Mr President, Members of the Court, I will now address Chile's views on question *(a)*.

II. CHILE'S VIEWS ON QUESTION *(A)*

17. In its first written submissions, Chile referred to some of the evidence before the Court which demonstrates that Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem and Gaza, amount to serious and reiterated violations of international law, *inter alia*, of the right of the Palestinian people to self-determination, of the rules and basic principles of international humanitarian law and of international human rights law, including the prohibition of racial discrimination.

18. Examining these violations is especially relevant in the present context of escalating hostilities. The upsurge of violence in the Occupied Palestinian Territory and in Israel is partly explained by decades of systematic disregard of international law. Less than four months before the Hamas terrorist attacks, former United Nations Secretary-General Ban Ki-moon and former United Nations High Commissioner for Human Rights Mary Robinson noted that Israel's policies, including its attempts to exercise sovereignty over the Occupied Palestinian Territory "risks an uncontrollable explosion of violence on both sides"[116]. The statement proved premonitory.

19. Noting that the current escalation of hostilities is partly explained by the status quo does not entail condoning the attacks of Hamas. Chile unequivocally condemns terrorist actions and has called for the immediate and unconditional release of all hostages since day one. However, as noted by the United Nations Secretary-General, the escalation "does not come in a vacuum", but grows out "of a long-standing conflict, with a 56-year long occupation, and no political end in sight"[117]. This

[116] The Elders, "Elders warn of consequences of 'one-state reality' in Israel and Palestine", 22 June 2023 https://theelders.org/news/elders-warn-consequences-one-state-reality-israel-and-palestine, accessed 8 Feb. 2024.

[117] UN Secretary-General, "Secretary-General's remarks to the press on the situation in the Middle East", 9 Oct. 2023, https://www.un.org/sg/en/content/sg/speeches/2023-10-09/secretary-generals-remarks-the-press-the-situation-the-middle-east, accessed 8 Feb. 2024.

further confirms the importance of determining the legal consequences arising from the ongoing violations of international law.

20. As Chile explained in its first written submission, there is vast evidence demonstrating the existence of serious violations of international law by Israel. Although Chile agrees with other States in noting that the Court does not need to make detailed findings on every incident mentioned throughout the submissions and in the more than 1,800 documents contained in the dossier filed by the Secretary-General, I would like to point to certain particularly serious violations which the Court should address in its advisory opinion.

21. First, Israel has violated and continues to violate human rights law, including the denial of the Palestinian people's self-determination, a norm of *jus cogens* nature[118]. The evidence is clear including the establishment and expansion of settlements, the confiscation of Palestinian land and arbitrary demolition of Palestinian houses, and the unwillingness and inability of Israeli authorities and officials to protect the Palestinian population from violence in breach of Israel's obligations as an occupying Power. The Human Rights Committee — the views of which have been given significant weight by the Court in the past[119] — regretted that "Palestinians have been systematically deprived of their land and housing rights for decades", expressed concern for the "systematic practice of demolitions and forced evictions based on discriminatory policies" and noted that such practices "led to the separation of Jewish and Palestinian communities in the Occupied Palestinian Territory, which amounts to racial segregation"[120].

22. These violations have worsened after the October 7 attacks. Israeli human rights nongovernmental organization (NGO) Yesh Din has noted that "2023 was the most violent year in settler violence against Palestinians in the West Bank in both the number of incidents and their severity", and that the first two months after 7 October 2023 "were particularly violent"[121]. Similar

---

[118] Report of the International Law Commission, Seventy-third session (18 April–3 June and 4 July–5 August 2022) A/77/10, para. 43, Conclusion 23.

[119] *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, *Merits, Judgment, I.C.J. Reports 2010 (II),* p. 639, para. 66.

[120] HRC, Concluding observations on the fifth periodic report of Israel (5 May 2022), CCPR/C/ISR/CO/5, para. 42.

[121] *The Times of Israel,* "2023 «most violent» year for West Bank settler attacks, watchdog says" (1 Jan. 2024) https://www.timesofisrael.com/2023-most-violent-year-for-west-bank-settler-attacks-watchdog-says/, accessed 8 Feb. 2024.

findings were made by Israeli NGO B'Tselem[122], Human Rights Watch[123] and the UN Office for the Coordination of Humanitarian Affairs[124]. The Office of the United Nations High Commissioner for Human Rights has also noted the rapid deterioration of the human rights situation in the West Bank and East Jerusalem after 7 October, including unnecessary and disproportionate use of force resulting in unlawful killing, mass arbitrary arrests, detentions and ill-treatment, and a further rise in settler violence, already at record-high levels[125]. In parallel, high-ranking Israeli authorities have expressed that they have no intent to guarantee the Palestinian people's right to self-determination in Gaza, by stating that "[t]he State of Israel will no longer be able to accept the existence of an independent entity in Gaza"[126] and by calling for the re-settlement of the Strip[127].

23. Israel has not only violated the Palestinian people's right to self-determination but also other rules of international law, including the *jus ad bellum*, by its *de jure* and *de facto* annexation of Palestinian territory. As developed in more detail in Chile's written submissions, and as eloquently put by former Special Rapporteur Lynk, "the inexorable Israeli occupation has become indistinguishable from annexation"[128]. Chile agrees with the views of most participants in these proceedings, in noting that Israel neither regards itself nor behaves as a temporary occupant of the Occupied Palestinian Territory, and that its practices and policies are inconsistent with a temporary administration of occupied territory.

24. Israel's policies and practices in the Occupied Palestinian Territory also amount to serious violations of Israel's obligations under international humanitarian law (including the prohibition of

---

[122] X (formerly Twitter), B'Tselem Tweet (12:32 pm 19 Nov. 2023) https://twitter.com/btselem/status/1726201658106163514, accessed 15 Feb. 2024. See also BBC, 'Palestinians under attack as Israeli settler violence surges in the West Bank' (21 Oct. 2023) https://www.bbc.com/news/world-middle-east-67173344, accessed 15 Feb. 2024.

[123] Human Rights Watch, "While a Fire Rages in Gaza, the West Bank Smolders" (22 Nov. 2023) https://www.hrw.org/news/2023/11/22/while-fire-rages-gaza-west-bank-smolders, accessed 15 Feb. 2024.

[124] United Nations Palestine "Rise in intimidation, settler violence in the West Bank, warns OCHA" (2 Nov. 2023), https://palestine.un.org/en/251552-rise-intimidation-settler-violence-west-bank-warns-ocha, accessed 15 Feb. 2024.

[125] OHCHR, Flash Report "The human rights situation in the occupied West Bank including East Jerusalem 7 October-20 November 2023" (28 Dec. 2023) https://www.ohchr.org/en/press-releases/2023/12/un-report-turk-warns-rapidly-deteriorating-human-rights-situation-west-bank, accessed 15 Feb. 2024.

[126] Reuters, "Israeli minister calls for voluntary emigration of Gazans" (14 Nov. 2023) https://www.reuters.com/world/middle-east/israeli-minister-calls-voluntary-emigration-gazans-2023-11-14/, accessed 8 Feb. 2024.

[127] Reuters, "Israeli ministers join ultranationalist conference urging Gaza resettlement" (29 Jan. 2024) https://www.reuters.com/world/middle-east/israeli-ministers-join-ultranationalist-conference-urging-gaza-resettlement-2024-01-29/, accessed 8 Feb. 2024.

[128] HCR, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk (12 Aug. 2022), UN doc. A/HRC/49/87, para. 51.

transferring civilian population into the occupied territory, which also amounts to a war crime), and under the rules of international human rights law, that forbid racial discrimination. This latter point has been repeatedly noted by authorities including the Secretary-General[129], the United Nations High Commissioner for Human Rights[130], Special Rapporteurs[131], among others. In his 2023 Report to the Human Rights Council, the High Commissioner documented "patterns of systematic discrimination in law, policy and practice, encompassing almost every sphere of life . . . in particular, housing, land and property rights and the right to life, security of person and access to justice"[132]. Already in 2019, the words of Prime Minister Netanyahu were crystal clear on this point: "Israel is not a State of all its citizens . . . Israel is the nation State of the Jewish people and only it"[133].

25. Before moving to question *(b)*, I want to note one additional feature of the above-mentioned violations: Israel has incurred them in blatant disregard of repeated admonitions by the Security Council[134], the General Assembly[135], the Human Rights Council[136] and the Court itself[137]. Furthermore, as noted in February 2023 by the President of the Security Council, it is clear that

---

[129] UNGA, "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan", Report of the Secretary-General (16 Sept. 2011), UN doc. A/66/364, paras. 7-33.

[130] HCR, "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan", Report of the United Nations High Commissioner for Human Rights (13 Apr. 2017), UN doc. A/HRC/34/39, para. 9; HRC, "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan", Report of the UN High Commissioner for Human Rights (30 Jan. 2020), UN doc. A/HRC/43/67, paras. 26-29.

[131] HCR, "Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled 'Human Rights Council'", Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard (29 Jan. 2007), UN doc. A/HRC/4/17, paras. 49-50; HRC, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk (12 Aug. 2022), UN doc. A/HRC/49/87, paras. 38-45; HRC, "Arbitrary deprivation of liberty in the occupied Palestinian territory: the Palestinian experience behind and beyond bars", Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese (28 Aug. 2023), UN doc. A/HRC/53/59, paras. 15, 31, 43, 57, 60.

[132] HCR, "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan", Report of the UN High Commissioner for Human Rights (15 Mar. 2023), UN doc. A/HRC/52/76, para. 2.

[133] *The Guardian,* "Benjamin Netanyahu says Israel is 'not a state of all its citizens'" (10 Mar. 2019) https://www.theguardian.com/world/2019/mar/10/benjamin-netanyahu-says-israel-is-not-a-state-of-all-its-citizens, accessed 8 Feb. 2024.

[134] UNSC resolutions 446 (1979), 22 Mar. 1979; 452 (1979) 20 July 1979; 465 (1980), 1 Mar. 1980; 476 (1980), f 30 June 1980; 478 (1980), 20 Aug. 1980; 2334 (2016), 23 Dec. 2016.

[135] UNGA resolutions 78/78, 7 Dec. 2023; 77/247, 30 Dec. 2022; 77/126, 12 Dec. 2022; 76/82, 9 Dec. 2021; 75/97, 10 Dec. 2020; 75/98, 10 Dec. 2020.

[136] HRC resolutions 52/35, 4 Apr. 2023; 52/34, 4 Apr. 2023; 52/3, 3 Apr. 2023; 49/29, 1 Apk. 2022; 49/28, 1 Apr. 2022; 49/4, 31 Mar. 2022; 46/26, 24 Mar. 2021; 46/25, 24 Mar. 2021; 46/3 23. Mar. 2021; 43/33, 22 June 2020; 43/32, 22 June 2020; 43/31, 22 June 2020; 43/3, 19 June 2020.

[137] *Wall* Advisory Opinion, p. 136.

Israel's practices actually run contrary to the possibility of reaching a two-State solution and a sustainable peace in the region[138].

26. These violations, among others, detailed in Chile's written statements, trigger Israel's international responsibility. Thus, Israel is under the obligation to cease these violations, make full reparation and offer appropriate assurances and guarantees of non-repetition. These violations also impose on other States various related obligations, including the obligation to co-operate to bring this situation to an end through lawful means. Chile is precisely co-operating to bring this situation to an end by participating in these advisory proceedings, and by its joint submission with Mexico of a referral to the International Criminal Court on the situation in Palestine[139].

27. Mr President, I will move to the second question posed to the Court.

III. CHILE'S VIEWS ON QUESTION *(b)*

28. In addressing question *(b)*, it is important to distinguish it clearly from question *(a)*. As previously explained, question *(a)* is concerned with the legal consequences arising from the violation by Israel of various international law obligations in the Occupied Palestinian Territory.

29. The second question is of a different nature. Question *(b)*, focuses on the legal status of the occupation, that is to say, on the illegality of the occupation itself. In this regard, if the Court finds that the occupation is unlawful, it necessarily follows that the occupation must come to an end.

30. The conclusion that Israel's occupation of Palestinian territory is illegal, lies on two grounds. First, there is ample evidence, as we have heard from States' oral presentations during these two days, that the occupation has become an annexation. Second, the cumulative effect of the above-mentioned systematic violations also requires the end of the occupation as the measure needed to effectively protect the rights of the Palestinians.

---

[138] UNSC, Statement by the President of the Security Council (20 Feb. 2023), UN doc. S/PRST/2023/1.

[139] Ministerio de Relaciones Exteriores, "Chile y México presentan remisión de la situación de Palestina ante la Corte Penal Internacional" (18 Jan. 2024), https://minrel.gob.cl/noticias-anteriores/chile-y-mexico-presentan-remision-de-la-situacion-de-palestina-ante-la, accessed 18 Feb. 2024.

31. With regard to the legality of an occupation, the test put forward by former Special Rapporteur Lynk is particularly useful[140]. According to this test, the occupier cannot annex any of the occupied territory, the occupation must be temporary, and the occupant must seek to end the occupation and return the territory as soon as reasonably possible.

32. The *de jure and de facto* annexation of the Occupied Palestinian Territory by Israel contradicts the basic principle of no acquisition of territory by force. In this regard, General Assembly resolution 2625 (XXV) establishes that "[t]he territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force"; and that "[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal".

33. The principle of no acquisition of territory by force has been applied by this Court in relation to States, with regard to mandated territories[141], and in relation to peoples and their right to sovereignty and integrity of their national territory[142].

34. This Court has recognized that the territorial integrity is a key element for the exercise of the right of self-determination through which peoples freely determine their political status and pursue their economic, social and cultural development[143]. In fact, the Court in the *Chagos* Advisory Opinion has considered there is an intrinsic link between territorial integrity and self-determination, such that "any detachment, [or annexation like in this case,] by the administering Power of part of a non-self-governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination"[144].

35. Occupation is often the result of armed conflict and, in so far as one of the main purposes of humanitarian law is to protect the civilian population that lives in areas affected by war, humanitarian law imposes various obligations upon the occupying Power, precisely to prevent the violation of their basic rights and the conquest of their territory.

---

[140] UNGA, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 Oct. 2017, UN doc. A/72/556, paras. 27-38. A similar test was put forward by Special Rapporteur Albanese: UNGA, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 Sept. 2022), UN doc. A/77/356, para. 10 *(b)*.

[141] *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950.*

[142] *Chagos* Advisory Opinion, p. 95, para. 160.

[143] *Ibid.*

[144] *Ibid.*

36. In this context, Article 47 of the Fourth Geneva Convention contains an absolute prohibition of the annexation of occupied territories. In this case, the intention to annex the territory of the Palestinian people is demonstrated by the fact that the Israeli occupation has already expanded for a period of 56 years with no intention to put an end to it and with no satisfactory explanation as to the relation between occupation and the protection of its citizens. The policy and practice of settlements pursued by Israel since 1967 indicate its intention to claim that its own population has a right to stay permanently on these territories. Similarly, its exploitation of Palestinian natural resources also demonstrates Israel's attempt to exercise sovereign powers over the Occupied Palestinian Territory. As an occupying Power, Israel is obligated to act as a temporary administrator on behalf of the protected population and as such it cannot destroy or appropriate these resources. However, the fact that it has completely sequestered them[145] clearly shows that Israel does not conduct itself as a provisional occupying Power.

37. Indeed, by virtue of its actions, including the exploitation of natural resources, the policies of settlements, the erection of the Wall, the legalization of outposts, among others, Israel has demonstrated its intention to control indefinitely the Occupied Palestinian Territory, hence, Israel's occupation has become an annexation.

38. Mr President, Members of the Court, turning now to the cumulative effects of the violation of self-determination, humanitarian law, human rights law and international criminal law in the Occupied Palestinian Territory, Chile contends that these systematic breaches are also a basis to declare that the occupation is illegal. Again, Special Rapporteur Lynk's test is useful in this regard. According to this test[146], the legality of an occupation requires the occupier to act in the best interests of the people under occupation and to administer the occupied territory in good faith, including acting in full compliance with the duties and obligations under international law.

---

[145] HRC, "Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a focus on access to water and environmental degradation", Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, 30 May 2019, A/HRC/40/73, para. 27.

[146] UNGA, "Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967", 23 Oct. 2017, A/72/556, paras. 27-38. A similar test was put forward by Special Rapporteur Albanese: UNGA "Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese", 21 Sept. 2022, A/77/356, para. 10 *(b)*.

The PRESIDENT: May I interrupt you? You have exceeded the time allocated to Chile. May I invite you to kindly conclude in a minute or two?

Ms FUENTES TORRIJO: Mr President, if you could, the Court, give me one more minute, I can finish it.

The PRESIDENT: Indeed.

Ms FUENTES TORRIJO: Thank you.

39. It is important to clarify that not any violation of international law by an occupying Power leads to the conclusion that the occupation must come to an end. As was previously stated, occupation might be the result of an armed conflict and, in that context, it is the responsibility of the occupying Power to prevent and punish any act in breach of international law undertaken by its armed forces and persons under its control. In so far as the occupying State fulfils its duty to prevent and punish the individual perpetrators, the violations will not by themselves raise the question of the illegality of the occupation.

40. But in this case, the systematic violation of international law is part of a State policy, and then we think that the occupation has become illegal.

41. Therefore, during this illegal occupation, the obligations of the occupying Power obviously persist, despite the fact that this occupation must come to an end.

42. Mr President, Members of the Court, with this I conclude Chile's presentation. Thank you very much.

The PRESIDENT: I thank the delegation of Chile for its presentation, which brings to a close this afternoon's hearing. The Court will meet again tomorrow morning, at 10 a.m., to hear Colombia, Cuba, Egypt, the United Arab Emirates and the United States of America. The sitting is adjourned.

The Court rose at 5 p.m.

_____