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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Thursday 22 February 2024, at 10 a.m., at the Peace Palace,

President Salam presiding,

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

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le jeudi 22 février 2024, à 10 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

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

COMPTE RENDU

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

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

M. Gautier, greffier

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S. Exc. M. Ali Alhadi, ministre plénipotentiaire,

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Sir Michael Wood, KCMG, KC, member of the Bar of England and Wales, Twenty Essex, London,

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Mr Wasfi Kailani, Director of the Hashemite Fund for the Restoration of Al-Aqsa Mosque and the Dome of the Rock,

Mr Odai Abdel Wahab Al Qaralleh, Ministry of Foreign Affairs and Expatriates,

Mr Haitham Ali Al Khaldi, Ministry of Foreign Affairs and Expatriates,

Mr Almuatasembellah Khalaf Alsalahin, Ministry of Justice,

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M^me^ Izumi Fujiwara, chercheuse, ambassade du Japon au Royaume des Pays-Bas,

comme conseils.

Le Gouvernement du Royaume hachémite de Jordanie est représenté par :

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M. Haitham Ali Al Khaldi, ministère des affaires étrangères et des expatriés,

M. Almuatasembellah Khalaf Alsalahin, ministère de la justice,

comme conseillers.

The PRESIDENT: Please be seated. The sitting is open.

La Cour se réunit ce matin pour entendre la Chine, la République islamique d'Iran, l'Iraq, l'Irlande, le Japon et la Jordanie sur les questions soumises à elle par l'Assemblée générale des Nations Unies relatives aux *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est*. Comme je l'ai déjà mentionné, chaque délégation est priée de ne pas aller au-delà des 30 minutes allouées pour sa présentation. Ce matin, la Cour observera une brève pause après la présentation de l'Iraq.

I shall now give the floor to the representative of China, His Excellency Mr Ma Xinmin. Your Excellency, you have the floor.

Mr MA:

INTRODUCTION

1. Mr President, distinguished Members of the Court, it is a great honour and a privilege to appear before you on behalf of China. China is committed to promoting the rule of law in international relations and stands in firm support of the Court in preserving and safeguarding international peace and security, international order, fairness and justice.

2. Dealing with the question of Palestine serves as a litmus test for the collective conscience of humanity, the wisdom of the United Nations and the authority of international law. The question of Palestine has persisted for over half a century, inflicting sufferings across generations. Countless Palestinians have been waiting in vain their entire lives, yet there remains no glimmer of hope in their efforts to restore the legitimate rights of the Palestinian people. Fundamentally, the foundation of the "two-State solution" has been continually eroding; the relevant United Nations resolutions have not been effectively implemented.

3. China has consistently supported the just cause of the Palestinian people in restoring their legitimate rights. Chinese President Xi Jinping has stressed on multiple occasions that China calls for a comprehensive ceasefire and an early solution to the question of Palestine on the basis of the two-State solution through negotiation.

4. China submitted its Written Statement to the Court last July. Today, I would like to further elaborate on China's views. My statement will be three parts, dealing with, respectively, the advisory

jurisdiction of the Court, self-determination of peoples, as well as *jus ad bellum* and international humanitarian law.

I. THE COURT HAS ADVISORY JURISDICTION AND SHOULD RENDER AN ADVISORY OPINION

5. Mr President, I will now turn to address the matter of jurisdiction. In this regard, China submits that the Court has jurisdiction over this case and there is no compelling reason for the Court to decline to exercise its jurisdiction.

6. China observes that some written statements submitted last July claim that there are compelling reasons for the Court to decline to render an advisory opinion. Their main concerns are: first, an advisory opinion would circumvent the principle of consent; second, the advisory opinion would undermine the established legal framework for resolving the question of Palestine or adversely impact the negotiation process.

7. China is of the view that these two arguments are not tenable. First, the subject of the present request falls within the competence of the General Assembly and has always been on its agenda. Therefore, the Court, by rendering an advisory opinion in this case, would not circumvent the principle of consent in the settlement of bilateral disputes. The question of Palestine, with its origin in the mandate system under the League of Nations, goes beyond the scope of bilateral affairs between Palestine and Israel. It directly relates to the responsibility of the United Nations on international peace and security. The United Nations has a "permanent responsibility" toward the question of Palestine[1].

8. Second, the issuance of an advisory opinion by the Court would not contradict the established legal framework or disrupt negotiations to settle the question of Palestine in accordance with international law. The Court's advisory opinion will not set up new legal frameworks or rules. Rather, it will find its basis in the established legal framework, including relevant Security Council resolutions and the Oslo Accords, and present an interpretation of relevant legal questions. Furthermore, the advisory opinion will offer clearer legal guidance on the legal issues involved in the negotiations, thus facilitating the relaunching of the negotiation process.

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[1] See UNGA res. 66/17, UN doc. A/RES/66/17 (30 Nov. 2011); UNGA res. 57/107, UN doc. A/RES/57/107 (3 Dec. 2002); UNGA res. 57/107, UN doc. A/RES/ES-10/15 (20 July 2004).

9. China supports the Court in discharging its jurisdiction in accordance with the law, with a focus on identifying, interpreting and applying existing rules, upholding the purposes and principles of the Charter of the United Nations, providing legal guidance to the UN in dealing with the question of Palestine, and fostering a proper settlement through peace talks.

II. ISRAEL HAS BEEN VIOLATING THE PALESTINIAN PEOPLE'S RIGHT TO SELF-DETERMINATION

10. Mr President, now I will turn to the Palestinian people's right to self-determination.

11. The Palestinian-Israeli conflict stems from Israel's prolonged occupation of Palestinian territory and Israel's long-standing oppression of the Palestinian people. The Palestinian people fight against Israeli oppression and their struggle for completing the establishment of an independent State on the occupied territories are, essentially, just actions for restoring their legitimate rights. The right to self-determination serves as the precise legal foundation for their struggle.

12. Self-determination of peoples is a fundamental principle of modern international law enshrined in the United Nations Charter and a collective human right under customary international law. In 1955, during the Bandung Conference, the Chinese Premier and Foreign Minister, Zhou Enlai, solemnly declared "full support of the principle of self-determination of peoples and nations as set forth in the [UN] Charter" and "took note of the [UN] resolutions on the rights of peoples and nations to self-determination, which is a pre-requisite of the full enjoyment of all fundamental Human Rights". This declaration was fully incorporated into the Final Communiqué of the Bandung Conference.

13. Let me clarify that self-determination only applies to two scenarios, namely peoples under colonial domination or foreign occupation. Under no circumstances does the right to self-determination afford any basis for any part or group within a sovereign State to claim a so-called "right to secession". International law does not recognize the existence of a right to so-called "remedial secession" or "remedial self-determination".

14. The Palestinian people, being a group residing in territory under foreign domination[2], is a *sui generis* international legal person as a whole[3]. The right to self-determination of the Palestinian people has been consistently reaffirmed in multiple United Nations resolutions[4] and the *Wall* Advisory Opinion[5]. This is also widely recognized by most States and international organizations.

15. The Palestinian people enjoy the right to self-determination, which includes five main aspects: first, the right to preserve territorial integrity;[6] second, the right to maintain national unity, that is, the Palestinian people, in its group identity, collectively enjoys and exercises the right to self-determination;[7] third, the right to freely determine their political status;[8] fourth, the right to freely pursue their economic, social and cultural development;[9] fifth, the right to permanent sovereignty over natural wealth and resources[10].

16. Every State is obliged to promote the realization of the right to self-determination and to refrain from any forcible action which deprives peoples of that right. In their pursuit of the right to self-determination, these peoples have the right to engage in struggles, seek and receive support[11]. On the basis of that right, the Palestinian people declared the establishment of the State of Palestine in 1988, which has been recognized by over 130 countries.

17. In pursuit of the right to self-determination, the Palestinian people's use of force to resist foreign oppression and to complete the establishment of an independent State is an inalienable right well founded in international law. Various peoples freed themselves from colonial rule and foreign

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[2] See UNGA resolutions A/RES/1514 (XV), 14 Dec. 1960; A/RES/2625 (XXV), 24 Oct. 1970, Annex; A/RES/55/2, 8 Sept. 2000, para. 4; A/RES/60/1, 16 Sept. 2005, para. 5.

[3] See UNGA resolutions A/RES/3070 (XXVIII), 30 Nov. 1973.

[4] See UNGA resolutions A/RES/2672 (C), 8 Dec. 1970; A/RES/3236 (XXIX), 22 Nov. 1974; A/RES/77/208, 15 Dec. 2022; A/RES/77/247, 30 Dec. 2022.

[5] *Wall* Advisory Opinion, pp. 171-172, para. 88 and pp. 182-183 para. 118.

[6] *Chagos* Advisory Opinion, p. 134, para. 160. See UNGA resolutions A/RES/2649 (XXV), 30 Nov. 1970, para. 4; A/RES/77/208, 15 Dec. 2022, preamble, para. 9.

[7] *Wall* Advisory Opinion, p. 184, para. 122; UNGA resolution A/RES/2150 (XX) (20 Dec. 1965), para. 5.

[8] See UNGA resolutions A/RES/1514 (XV), 14 Dec. 1960; A/RES/2625 (XXV), 24 Oct. 1970, Annex; International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, Common Article 1.

[9] *Ibid.*

[10] See ICCPR and ICESCR, Common Article 1; UNGA resolutions A/RES/3281 (XXIX), 12 Dec. 1974, Article 2; A/RES/41/128, 4 Dec. 1986, Art. 1; UN Doc. A/77/10, Chap. V, Art(s). 16, 20.

[11] See UNGA resolutions A/RES/2625 (XXV), 24 Oct. 1970, Annex; A/RES/3314 (XXIX), 14 Dec. 1974, Annex, Art. 7; A/RES/36/103, 9 Dec. 1981, Annex, II *(d)*.

oppression to realize independent statehood after World War II. Their practices serve as convincing evidence for this right. Numerous UNGA resolutions recognize the legitimacy of struggling by all available means, including armed struggle, by peoples under colonial domination or foreign occupation to realize the right to self-determination[12]. For instance, the UNGA resolution 3070 of 1973 "*reaffirms* the legitimacy of the people's struggle for liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle". This recognition is also reflected in international conventions. For example, the Arab Convention for the Suppression of Terrorism of 1998 affirms "the right of peoples to combat foreign occupation and aggression by whatever means, including armed struggle, in order to liberate their territories and secure their right to self-determination, and independence"[13].

18. Armed struggle in this context is distinguished from acts of terrorism. It is grounded in international law. This distinction is acknowledged by several international conventions. For example[14], Article 3 of the Organisation of African Unity Convention on the Prevention and Combating of Terrorism of 1999 provides that "the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces *shall not be considered as terrorist acts*". It should be emphasized that, the use of force by any entity or individual in the name of exercising the right to self-determination outside the context of colonial domination or foreign occupation is not legitimate. Meanwhile, during legitimate armed struggle by peoples, all parties are obliged to comply with international humanitarian law and, in particular, to refrain from committing acts of terrorism in violation of international humanitarian law.

19. Against the backdrop of the Occupied Palestinian Territory, well-documented and widely recognized facts indicate that Israel's oppressing policies and practices, throughout its prolonged

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[12] See UNGA resolutions A/RES/3103 (XXVIII), 12 Dec. 1973; A/RES/3328 (XXIX), 16 Dec. 1974; A/RES/3481 (XXX), 11 Dec. 1975; A/RES/31/91, 14 Dec. 1976; A/RES/31/92, 14 Dec. 1976; A/RES/32/42, 7 Dec. 1977; A/RES/32/154, 19 Dec. 1977.

[13] See also Convention of the Organization of the Islamic Conference on Combating International Terrorism of 1999, preamble.

[14] See also Arab Convention for the Suppression of Terrorism of 1998, Art. 2; Convention of the Organization of the Islamic Conference on Combating International Terrorism of 1999, Art. 2.

occupation of Palestinian territory, have severely undermined and impeded the exercise and full realization of the Palestinian people's right to self-determination.

III. ISRAEL'S OCCUPATION OF PALESTINIAN TERRITORIES VIOLATES INTERNATIONAL LAW

20. Mr President, now I will move on to the issues of international law relating to the occupation.

21. In China's view, the question of the Occupied Palestinian Territory involves both the legality of the occupation per se and the legality of Israel's acts during the occupation. These two aspects are governed by distinct legal frameworks. The former falls under *jus ad bellum*, while the latter is mainly regulated by international humanitarian law.

22. Within the framework of *jus ad bellum*, the principle and exceptions are established by the United Nations Charter and customary international law.

23. The principle of non-use of force is at the core of *jus ad bellum*. As a corollary of this principle, the prohibition on the acquisition of territory by force is firmly established in customary international law. Using force to occupy and maintain such occupation for the purposes of territorial acquisition or annexing an occupied territory by force in whole or in part, is each illegal. These are confirmed by the Friendly Relations Declaration of 1970, the "Definition of Aggression" of 1974 and the *Wall* Advisory Opinion[15].

24. Israel's occupation has been explicitly recognized as unlawful by several United Nations resolutions. Following Israel's occupation of the Palestinian territories in 1967, the Security Council adopted resolution 242 that "[e]mphasiz[es] *the inadmissibility* of the acquisition of territory by war". Similarly, multiple General Assembly resolutions affirmed the illegality of Israel's occupation[16].

25. In addition to the use of force by peoples under colonial domination or foreign occupation in the exercise of their right to self-determination, the United Nations Charter provides for two exceptions to the principle of non-use of force, namely, the use of force authorized by the Security Council under Chapter 7, and the right of self-defence under Article 51.

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[15] *Wall* Advisory Opinion, p. 166, para. 74, p. 171, para. 87, p. 182, para. 117.

[16] See, for example, UNGA resolutions A/RES/3414(XXX), 5 Dec. 1975, para. 2; A/RES/36/147E, 16 Dec. 1981, preamble, para. 4.

26. The exercise of the right to self-defence, as an "inherent right" of States, is contingent upon the occurrence of an armed attack against the territorial sovereignty of a State. When can an occupying Power invoke the right of self-defence? It hinges on whether the armed attack occurs in the occupied territory or within its own territory.

27. In the occupied territory, the right of the occupying Power to self-defence depends on the legitimacy of the occupation per se. If the occupation is unlawful, the occupying Power can neither acquire territorial sovereignty nor resort to self-defence against an armed attack that occurred in the occupied territory. This is rooted in the legal maxim, "no one can take advantage of his own wrong".

28. However, this does not rule out the possibility for the occupying Power, based on temporary administration, as a last resort, to take necessary forcible law enforcement measures against individuals or entities in the occupied territory. Nor does it preclude the use of force by the occupying Power against the combatants and military targets in accordance with *jus in bello*. These acts must stay within the limits set by international law.

29. Within its own territory, an occupying Power is entitled to self-defence against an armed attack. However, the exercise of this right is subject to various principles, including necessity and proportionality, as reflected in customary international law[17].

30. Under the framework of international humanitarian law, the legality or not of the occupation per se will not affect the application of international humanitarian law in the occupied territory. The armed conflict in which oppressed peoples struggle against colonial domination or foreign occupation, in the exercise of their right to self-determination, is considered as an international armed conflict[18]. Consequently, international humanitarian law, including the rules of belligerent occupation, is applicable to all parties involved in such conflicts.

31. It is noted that belligerent occupation is a special régime involving the temporary administration of occupied territories by the occupying Power and it is governed by two principles.

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[17] *Nuclear Weapons* Advisory Opinion, p. 245, para. 42.

[18] See Additional Protocol (I) to the Geneva Conventions of 1977, Art. 1, para. 4; UNGA res. A/RES/3103 (XXVIII) (12 Dec. 1973).

32. First, the principle of temporary administration[19], that is, the occupying Power can exercise provisional jurisdiction over the occupied territory, including limited but not necessarily legislative judicial and law enforcement power, with the obligation to maintain law and order and public life in good faith.

33. Meanwhile, the occupying Power is obliged to respect and protect civilians and property in the occupied territory under international humanitarian law and international human rights law. It should serve the best interests of the people of the occupied territories, and refrain from plundering resources and property, forcibly transferring or deporting inhabitants, practicing apartheid, adopting discriminatory legislation and other related violations.

34. Second, the principle of non-alteration of the territorial sovereignty of the occupied territory[20]. This is a corollary of the principle of prohibition on the acquisition of territory by force. It underscores the non-sovereign nature of belligerent occupation. The occupying Power is obliged to preserve the *status quo ante* of the occupied territory and refrain from altering the sovereignty over the occupied territory.

35. Obviously, the rules of belligerent occupation are applicable to the Occupied Palestinian Territory and should be followed by both parties to the conflict. Facts indicate that relevant Israeli policies and practices have violated international humanitarian law and international human rights law.

36. China is of the view that the temporary and non-sovereign nature of belligerent occupation means that an occupying Power cannot acquire sovereignty over the territory during the belligerency. Belligerent occupation, under any circumstances, does not have the effect of lawful annexation. The rules of acquisitive prescription in international law does not apply to belligerent occupation. Fifty-seven years have passed since Israel began its occupation of the Palestinian territory. Regardless of the duration of the occupation, the unlawful nature of the occupation and the sovereignty over the occupied territories remain unchanged.

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[19] See Regulations concerning the Laws and Customs of War on Land annexed to Convention (IV) respecting the Laws and Customs of War on Land of 1907, Arts. 43, 55; UNGA res. A/RES/77/126 (12 Dec. 2022), para. 7.

[20] See UNGA res. A/RES/2625 (XXV) (24 Oct. 1970), Annex; A/RES/3314 (XXIX) (14 Dec. 1974), Annex, Art. 3 *(a)*; Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949, Arts. 47, 49.

CONCLUSION

37. Mr President, justice has been long delayed, but it must not be denied. The settlement of the question of Palestine requires mutual efforts from Palestine and Israel, along with the joint efforts of the international community. China encourages both parties to accommodate each other's legitimate concerns, embrace the vision of common, comprehensive, co-operative and sustainable security, continue negotiating for a peaceful settlement and work toward two States coexisting in peace, and two peoples living side by side in harmony.

38. Mr President, distinguished Members of the Court, that concludes China's statement. I would like to thank you for your patient attention. I also wish to thank the Registry and all the staff for your kind support. I thank you all.

The PRESIDENT: I thank the delegation of China for its presentation. I invite the next participating delegation, the Islamic Republic of Iran, to address the Court. I call upon His Excellency Mr Reza Najafi to take the floor.

Mr NAJAFI:

I. INTRODUCTION

1. Mr President, distinguished Members of the Court, it is indeed an honour to appear before the International Court of Justice on behalf of the Islamic Republic of Iran.

2. Enjoying a long-standing principled position in support of the full realization of the inherent right of the Palestinian people to self-determination, the Islamic Republic of Iran follows this advisory proceeding of the Court with great interest.

3. What makes this proceeding even more prominent and focus of attention of almost every nation in the world is its concurrence with the ongoing appalling situation in Palestine, particularly the Gaza Strip.

4. To indicate how severe and grave the situation in Gaza is, I merely refer to three United Nations and World Health Organization (WHO) reports:

— first, according to the United Nations Secretary-General, as a result of Israeli military operations, the entire population is enduring destruction at a scale and speed without parallel in recent history

and 2.2 million Palestinians there are struggling to simply make it through another day without proper shelter, heating, sanitary facilities, food and drinking water[21];

— second, according to the United Nations Under-Secretary-General for Humanitarian Affairs, "for children in particular, there is no food, no water, no school; nothing but the terrifying sounds of war, day in and day out, and its people are witnessing daily threats to their very existence — while the world watches on"[22]; and

— third, according to the WHO, the population in Gaza is facing extreme hunger, with insufficient food and high levels of malnutrition[23]. Yet, the conditions in Gaza are becoming much worse every day.

5. We remain at a turning point in the history of mankind; the opinion of this Court can set the ground for saving lives of thousands of innocent women and children, and contribute to the legitimate demand of a people deprived of its inherent right to self-determination for decades.

6. It is hoped that this Court will, once more, make history by giving a landmark advisory opinion in support of the right to self-determination of the Palestinian people which may finally help cease the illegal prolonged occupation of Palestine.

7. Mr President, Members of the Court, in our oral statement, we submit that:

— firstly, this Court has jurisdiction to give the advisory opinion requested;

— secondly, there are legal consequences arising from the prolonged occupation of the Palestinian territories by the Israeli occupying régime in violation of the right of the Palestinian people who have never experienced the right to self-determination; and

— thirdly, having elaborated on the legal consequences that arise for all States and the United Nations from this status, I will reiterate the inclusive plan previously submitted by the Islamic Republic of Iran to the United Nations for the realization of the right of Palestinians to self-determination.

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[21] "UN Secretary-General's remarks to the Security Council - on the Middle East", 23 Jan. 2024.

[22] OCHA, "UN relief chief: The war in Gaza must end", Statement by Martin Griffiths, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, 5 Jan. 2024.

[23] See WHO, "Lethal combination of hunger and disease to lead to more deaths in Gaza", 21 Dec. 2023.

II. JURISDICTION OF THE COURT

8. Mr President, first we submit that the Court has jurisdiction to render the advisory opinion requested by the General Assembly in resolution 77/247 of 30 December 2022.

9. Here we believe that the elements of Article 65 (1) of the Statute of the Court, namely the existence of the "legal question" and the authorized "body", i.e. the General Assembly, are fulfilled in this case. That said, the International Court of Justice, as the principal judicial organ of the United Nations can assist the General Assembly to exercise its functions under the United Nations Charter by rendering the advisory opinion requested.

10. Therefore, just as the Court has established its jurisdiction in the advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, it has jurisdiction in the present case based on the same grounds; moreover, there is no compelling reason for declining to give an advisory opinion.

III. THE LEGAL CONSEQUENCES ARISING FROM THE ONGOING VIOLATION OF THE RIGHT OF THE PALESTINIANS TO SELF-DETERMINATION

11. Mr President, now I turn to the first section of our reasoning regarding the merits of the matter; here, we first argue that the Israeli occupying régime has violated, and continues to violate, on several grounds, the Palestinians' right to self-determination.

12. The legal status of the right to self-determination is generally understood to be attributed to "peoples" and grounded first in the United Nations Charter[24], in several United Nations General Assembly resolutions[25] and its inclusion in common Article 1 of the two International Covenants of Human Rights[26]. As such,

> "all peoples have the right freely to determine, without external interference, their political status and their place in the international community and to pursue their

[24] Article 1 (2) of the UN Charter reads: "The Purposes of the United Nations are: . . . 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace".

[25] UNGA res. 2625 (XXV): Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, 24 Oct. 1970, UN doc. A/RES/2625 (XXV).

[26] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) (ICCPR), 999 *UNTS* 171; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) (ICESCR), *UNTS* 93.

economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter"[27].

13. In line with the elements mentioned in the question raised for the request of advisory opinion in the General Assembly resolution, I briefly present my arguments on a series of measures that constitute the ongoing violation by the Israeli occupying régime. These are as follows:

(i) prolonged occupation;

(ii) altering the demographic composition in the occupied territories;

(iii) altering the character and status of the Holy City of Al-Quds;

(iv) discriminatory measures; and

(v) violation of the right of the Palestinian people to permanent sovereignty over their natural resources.

(i) Prolonged occupation

14. First and foremost, the prolonged occupation by the Israeli occupying régime confirms its intention to make it permanent, in violation of the principle of prohibition of the acquisition of territory by force.

15. The occupation of the Palestinian territories is the longest military occupation existing today. The right to self-determination of the Palestinian people continues to be violated as long as this occupation ages; this ongoing violation thwarts the Palestinians' ability to rely on State-based rights and obligations under international law[28], depriving them of their inalienable right to self-determination, including their right to live in freedom, justice and dignity.

16. Thus, we request the Court to consider the very fact of prolongation of the occupation as an indicator of the violation of the right of Palestinians to self-determination.

(ii) Altering the demographic composition in the occupied territories

17. Mr President, apart from prolonged occupation, altering the demographic composition in the occupied territories has led to violation of the Palestinians' right to self-determination. The

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[27] UNGA, UN doc. A/RES/2625(XXV); see also common Article 1 (2) of the ICCPR and ICESCR; see also HRC, General Comment No. 12: Article 1 (Right to self-determination), 13 Apr. 1984, para. 6.

[28] In November 2012, the UN General Assembly decided, by 138 votes to 9 with 41 States abstaining, "to accord to Palestine non-member observer State status in the United Nations", Status of Palestine in the United Nations: Resolution adopted by the General Assembly on 29 November 2012, 4 Dec. 2012, UN doc A/Res/67/19, 3;

United Nations Security Council has a bulk of resolutions concerning the occupation of Palestinian territories, all condemning, among others, altering the demographic composition of these territories by the Israeli occupying Power[29]. Hence, it is a well-established fact that the Israeli occupying régime has grossly violated international law on an *ongoing* basis. Article 49 of the Fourth Geneva Convention reads: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." Apart from that, the Court, in its opinion in the *Wall* case declared that:

> "[the] provision prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory"[30].

18. Furthermore, the Court affirmed, in the same case, the violation of the right to self-determination based on measures taken by the occupying Power which has led to a change in the demographic composition of Palestine.

19. Mr President, Members of the Court, forcible deportation of civilian populations, widely known for one of its most infamous instances as "Nakba Day", has a long history. Essentially, with the illegal formation of the Israeli occupying régime in 1948 instead of the former British Mandate of Palestine, the demographic composition changed significantly with the displacement of more than 700,000 Palestinians. In fact, the Israeli occupying régime was illegally established that year through a violent, arbitrary process and involved the deportation or forcible transfer of hundreds of thousands of native Palestinians from their land to create a majority Jewish colony, in line with the demands of the Zionist movement.

20. By denying the right to return of forcibly deported Palestinians to Palestine, the Israeli régime continues to deprive those Palestinians of their right to live in their homeland. The majority of Palestinians live outside Palestine mainly in Jordan, Syria and Lebanon, with many of them remaining stateless, living in crowded refugee camps that lack basic infrastructure.

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[29] Including resolutions 242 (1967), 338 (1973), 446 (1979), 452 (1979), 465 (1980), 476 (1980), 478 (1980), 1397 (2002), 1515 (2003) and 1850 (2008), as cited in UNSC resolution 2334, adopted by the Security Council at its 7853rd meeting on 23 December 2016, 23 Dec. 2016, UN doc. S/RES/2334, condemning all measures aimed at altering the demographic composition, character and status of the Palestinian territories, construction and expansion of settlements, transfer of settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant UN resolutions.

[30] *Wall* Advisory Opinion, p. 136, para. 120.

21. Needless to say, forcible displacement of civilian population is of such a high significance that it has been defined as a war crime under Article 8 of the Statute of the International Criminal Court.

(iii) Altering the character and status of the Holy City of Al-Quds

22. Mr President, the next measure that has violated the right of self-determination of Palestinians, is altering the character and status of the Holy City of Al-Quds. The actions taken by the Israeli occupying régime with regard to the Holy City of Al-Quds have utterly disregarded the right to self-determination of the Palestinian people.

23. Altering the character and status of Al-Quds has had significant religious and cultural implications for the Palestinian people. Al-Quds Al-Sharif has a remarkable religious and historical significance for Palestinians, as well as for Muslims, Christians and Jews worldwide. By altering the status quo of the City and its holy sites, the Israeli occupying régime has undermined the cultural heritage and identity of the Palestinian people and has further violated their right to self-determination.

24. The construction and expansion of the settlements, along with the violation of Palestinians' right to free movement and the revocation of residency permits, have altered the demographic and cultural character of the City as well[31].

(iv) Discriminatory measures

25. Mr President, Members of the Court, the next series of measures depriving the Palestinian people of their right to self-determination comprise of discriminatory measures targeting the basic rights of the people in the occupied territories. This has been underlined by the United Nations General Assembly and recorded extensively to include the killing and injury of civilians, the forced displacement of civilians and a systematic policy of obstruction of humanitarian assistance[32].

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[31] UNGA, UN doc. A/76/333, 20 Sept. 2021, Occupying Power's practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including Quds. It covers the period from 1 June 2020 to 31 May 2021 and includes a report on the construction and expansion of settlements, along with the restriction of Palestinians' movement and the revocation of residency permits, and altering the demographic and cultural character of the City.

[32] See UNGA, UN doc. A/77/356, 21 Sept. 2022.

26. The Israeli occupying régime's action, as manifested in various laws and policies, has created a system of discrimination that has negatively affected the Palestinian population. In Palestine, the occupying régime's expansionism has consolidated into apartheid through the longest occupation in modern history[33]. It is well established that apartheid is a crime against conscience and dignity of mankind[34], and is further in violation of fundamental principles of international law enshrined in the United Nations Charter and crystalized in international human rights law, and seriously threatens international peace and security.

27. The Special Rapporteur on the situation of human rights in Palestine has concluded that the political system of entrenched rule in occupied Palestine, which endows one racial-national-ethnic group with substantial rights, benefits and privileges while intentionally subjecting another group to live behind walls and checkpoints under a permanent military rule, satisfies the prevailing evidentiary standard for the existence of apartheid[35]. Many laws, policies and practices implemented since 1948 by the Israeli occupying régime have been aimed at fragmenting the Palestinian people and dividing them into various groups; this clearly denies the Palestinian people its right to self-determination.

28. In tandem with the above, construction and expansion of the settlements, segregated roads, barriers and checkpoints has created a system of apartheid, effectively isolating Palestinian communities, which manifestly violates multiple provisions of the Convention on the Elimination of All Forms of Racial Discrimination.

29. The Court is, therefore, requested to opine that such policies and practices must be ceased immediately as they continue to violate the right of self-determination of the Palestinian people.

(v) Violation of the right of the Palestinian people to permanent sovereignty over their natural resources

30. Mr President, Members of the Court, the right to exercise permanent sovereignty over natural resources is an inevitable component of the right to self-determination. The two international

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[33] *Ibid.*

[34] UNSC resolution 473 (1980), 13 June 1980, para. 3.

[35] HRC, UN doc. A/HRC/49/87, 21 Mar. 2022, para. 52.

covenants of human rights[36] and a number of United Nations General Assembly resolutions recognize this right[37]. The United Nations General Assembly has expressed grave concern over a range of practices by the Israeli occupying régime negatively impacting Palestinians' natural resources[38].

31. It has been affirmed that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources is an integral component of the right to self-determination. It has been further confirmed that the right should be used in the interest of their national development, the well-being of the Palestinian people and as part of their right to self-determination.

32. Yet, Palestinians do not enjoy their own natural resources, which include land, fresh water and mineral resources. Imposing restrictions, by the Israeli régime, on access of Palestinians to water resources, groundwater and hydrocarbon deposits are all instances of flagrant violation of the right to self-determination.

IV. LEGAL CONSEQUENCES THAT ARISE FOR ALL STATES AND THE UNITED NATIONS FROM THIS STATUS

33. Mr President, Members of the Court, this Court has, in several cases, in particular in the *Wall* case, identified the obligation to respect the right of self-determination having an *erga omnes* character as "one of the essential principles of contemporary international law"[39].

34. As a general rule, where *erga omnes* obligations of international law are breached, third States have mainly three obligations: firstly, "non-assistance"; secondly, "non-recognition"; and lastly, "cooperation to bring to an end such a violation". In this context, an "interested" or "third" State, in accordance with the jurisprudence of the International Court of Justice, could be defined as one which is not directly affected or injured by an internationally wrongful act, and which has yet a

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[36] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) (ICCPR), 999 *UNTS* 171, Art. 1; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), *UNTS* 93 (ICESCR), Art. 1.

[37] UNGA res. 1803 (XVII), 12 Dec. 1962, para. 7; UNGA res. 3281 (XXIX), 12 Dec. 1974, Art. 2, para. 1; UNGA res. 41/128, 4 Dec. 1986, para. 1 (2).

[38] Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including Quds, and of the Arab population in the Occupied Syrian Golan over their natural resources: resolution adopted by the General Assembly on 22 December 2011, 29 Mar. 2012, UN doc. A/RES/66/225. This includes the destruction of agricultural land and orchards, and the destruction of water pipelines and sewage networks, which negatively affects the water supply.

[39] See *Namibia* Advisory Opinion, pp. 31-32, paras. 52-53; *Western Sahara* Advisory Opinion, pp. 31-33, paras. 54-59; *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 28; *Wall* Advisory Opinion, pp. 199-200, paras. 155-159.

legal interest in the protection and compliance of the rights by the very reason "of the importance of the rights involved . . . and their very nature" which makes them "the concern of all States"[40].

35. As regards the primary obligations of third States towards prolonged occupation of Palestine, the three obligations mentioned above remain relevant in accordance with paragraph 146 of the 2004 Advisory Opinion in the *Wall* case[41].

36. In addition to the jurisprudence of the International Court of Justice, the primary triple obligations of third States towards serious breaches of *erga omnes* obligations find support in the practice of other United Nations organs as well. In its resolution 2334, the United Nations Security Council unequivocally reiterated the importance of States abstaining from recognizing the occupying Power's internationally wrongful acts[42].

37. The International Law Commission, in Draft Article 41 (1) of its 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts, along with underlining the duty of a State to not recognize as lawful a situation created by a serious breach of *erga omnes* rules, and not to render aid or assistance in maintaining that situation, emphasized the duty of all States to co-operate through lawful means, in a joint and co-ordinated effort, to counteract the effects of these breaches[43].

38. Mr President, in light of the above-mentioned, the Court is requested to remind all States of their obligations under international law of the following:

— First, not to aid or assist, directly or indirectly, the Israeli occupying régime enabling it to continue its prolonged occupation of Palestine and/or any of its continued policies and practices that violate the right to self-determination of the Palestinian people; this may include in particular avoiding any kind of political, military, economic or other co-operation with the Israeli régime enabling it to continue such violations.

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[40] *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 32, paras. 33-34.

[41] The Court held that: "States are under an obligation not to recognize the illegal situation arising from the construction of the wall, not to render aid or assistance in maintaining that situation and to co-operate with a view to putting an end to the alleged violations and to ensuring that reparation will be made therefor", *Wall* Advisory Opinion, p. 196, para. 146.

[42] UNSC res. 2334, 23 Dec. 2016, para. 5; see also: UNSC res. 242, 22 Nov. 1967; UNSC res. 338, 22 Oct.1973; UNSC res. 446, 22 Mar. 1979; UNSC res. 452, 20 July 1979; UNSC res. 465, 1 Mar. 1980; UNSC res. 476, 20 Aug. 1980; UNSC res. 478, 20 Aug. 1980; UNSC res. 1397, 12 Mar. 2002; UNSC res. 1515, 22 May 2003; and UNSC res. 1850, 16 Dec. 2008.

[43] UN doc. A/56/10 Supplement No. 10, Report of the International Law Commission on the Work of Its Fifty-Third Session (23 April-1 June and 2 July-10 August 2001), Nov. 2001, Chap. IV (E: "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries"), pp. 113-114.

— Second, not to recognize the illegal situation resulting from prolonged occupation, by the Israeli occupying régime, of Palestinian territory and/or any of its continued measures that violate the right to self-determination of the Palestinian people; and

— Third, to co-operate effectively with one another in all relevant fields and forums to bring to an end any impediment resulting from the ongoing violation by the Israeli occupying régime of the right of the Palestinian people to self-determination, including from its prolonged occupation, and any of its measures aimed at altering the demographic composition, character and status of the Holy City of Al-Quds; obviously, such co-operation is of utmost urgency and importance given the ongoing situation in the Gaza Strip, where, according to one estimate, Israel's military is killing Palestinians at an average rate of 250 people a day, which exceeds the daily death toll of any other major conflict of recent years[44].

39. In this context, I recall this honourable Court's important Order of 26 January 2024 on the request by South Africa for the indication of provisional measures. The Order concerns the application of the Convention on the Prevention and Punishment of the Crime of Genocide and, as such, all States, in particular those providing support to Israel, are legally under the duty to prevent genocide, particularly by ceasing to provide any aid to the *genocider*. They are under a duty to punish perpetrators of the crime of genocide. Given the current extremely tragic conditions in the Gaza Strip, the Court is respectfully requested to, once again, call on the occupying régime to fully comply with the Order. Evidently, in practical terms, even the partial compliance of the Israeli régime with only subparagraph 1 of paragraph 86 of that Order is possible only through complete termination of all its military operations in the Gaza Strip.

40. Mr President, I would like to recall the primary responsibility of the Security Council for the maintenance of international peace and security under Article 24 of the United Nations Charter. I submit that the inaction or insufficient action of the Security Council, if not the main, is one of the main causes of the prolonged occupation of the Palestinian territories. All the atrocities and crimes committed by the Israeli régime in the past almost 80 years are a consequence of such inaction. Even today, the Security Council is paralysed due to the stalemate caused by a certain permanent Member.

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[44] Available at https://www.oxfam.org/en/press-releases/daily-death-rate-gaza-higher-any-other-major-21st-century-conflictoxfam#:~:text=Israel's%20military%20is%20killing%20Palestinians,hostilities%20nears%20its%20100th%20day.

Other relevant United Nations bodies have also the responsibility to monitor and document human rights violations, and to facilitate bringing the perpetrators to justice.

41. This fact alone underscores how essential it is for the Court to remind the Security Council of its Charter-based obligation. It must also be made clear that such an obligation cannot be fulfilled by convening meetings or issuing certain impotent procedural resolutions; rather, it needs conclusive decisions under Chapter VII of the United Nations Charter and a follow-up mechanism to ensure its full and prompt implementation by the Israeli régime.

V. CONCLUSION

42. Mr President, as our Supreme Leader said: "The calamity of Gaza is the calamity of humanity and the international community as a whole." Therefore, each and every State and relevant international organization has its own legal and moral responsibility to act urgently and decisively to prevent the ongoing crimes of the Israeli régime in the Gaza Strip.

43. Definitely, as the principal judicial organ of the United Nations, this Court has an important role to play. Now the world nations expect the Court to render its advisory opinion in a manner that effectively and practically consolidates the rule of law to the detriment of the rule of power, and to bring hope to Palestinians that justice will ultimately prevail. We should not leave them alone and let them down in days that they need the support and assistance of humanity the most. This is a collective legal and moral responsibility, and we must fulfil it responsibly.

44. Finally, Mr President, I must stress that our participation in this hearing and the content of our statement here is without prejudice to the long-standing position of the Islamic Republic of Iran regarding the question of Palestine. In the view of the Islamic Republic of Iran, the only legal, practical, democratic and just method to effectively realize the inherent right to self-determination of the Palestinian people is to hold a national referendum in Palestine. The details of this plan are contained in an official document of the United Nations issued in 2019[45].

45. Lastly, this statement shall, in no way, imply our recognition of Israel. I thank you, Mr President.

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[45] UNSC, Letter dated 1 November 2019 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General contained in doc. S/2019/862, 4 Nov. 2019.

The PRESIDENT: I thank the delegation of the Islamic Republic of Iran for its presentation. I invite the next participating delegation, Iraq, to address the Court, and call Mr Hayder Shiya Albarrak to the podium.

Mr ALBARRAK:

1. Mr President, Members of the Court, may the peace, mercy and blessings of God be upon you. I extend to you my greetings of peace, mercy and blessing that are said, intended and hoped for by nearly one billion people in this world.

2. Mr President, Members of the Court, ladies and gentlemen, those who are calling for justice in every corner of the globe. It is an honour for me to represent the Republic of Iraq before the International Court of Justice today and to address your esteemed justice and humanity conscience in the tragedy of a country called Palestine, and the ordeal of its people, which began in 1948, and continues to endure, as we gather in this place that captures the attention for being the fortress of international justice, at an exceptional time experienced by humanity and the honourable people around the world who seek justice for the oppressed Palestinian people, who have suffered and continue to endure ongoing injustice for seven decades. We are confident that the decisions of your distinguished Court will remain a beacon of hope and guidance for all the persecuted and oppressed worldwide. Iraq would also like to express gratitude to its friend, the State of South Africa, for presenting the case of unprecedented human rights violations committed by the occupying Israeli entity against the oppressed Palestinian people before your esteemed Court.

3. Mr President, Members of the Court, we would like to bring to the attention of your distinguished Court the decision of the United Nations General Assembly, resolution 77/247, adopted during its 56th session on 30 December 2022, under agenda item 47, pursuant to Article 96 of the United Nations Charter and in accordance with Article 65 of the Statute of the International Court of Justice. The General Assembly has decided to request an advisory opinion from your esteemed Court on the matters referred to in paragraph 18 of the aforementioned resolution.

4. The Republic of Iraq attaches utmost importance to the supremacy of international law, based on the purposes and principles of the United Nations Charter and international treaties concerning human rights and relevant international instruments, and the role of the International

Court of Justice as the principal judicial organ of the United Nations and, based on the aforementioned, Iraq wants to take this opportunity to present its case and express its views regarding the pending request for an advisory opinion.

5. Iraq believes that the Court's opinion will provide the necessary legal elements to enhance efforts aimed at restoring peace and stability in Palestine and the Middle East region. Particularly noteworthy is the fact that the Court has, on previous occasions, considered cases and issued opinions related to practices and violations against the rights of the Palestinian people, and specifically I refer to the Advisory Opinion regarding the legal consequences arising from the construction of the wall in the occupied Palestinian territories in 2004.

6. Mr President, recalling today your distinguished Court Order, dated 26 January 2024, on the application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa vs Israeli occupying entity), we are convinced that the Court's orders under Article 41 of the Statute of the Court are of binding effect under Article 94 of the Charter of the United Nations, and we call for the respect of and compliance with these decisions under any circumstance or in any place in order to stop the systematic killing machine against the Palestinian people.

7. We hope that the Court's commitment to justice will lead to additional decisions, affirming its dedication to ending the campaign of mass murder and preventing acts of genocide, as well as policies of harassment, blockade and starvation against the Palestinian people.

8. Mr President, Members of the Court, Iraq believes that the Court has the jurisdiction to issue the advisory opinion, as the request for the opinion is submitted by the United Nations General Assembly, an authorized body to seek advisory opinions under paragraph 1 of Article 96 of the United Nations Charter. The subject-matter of the advisory opinion falls within the competence of the General Assembly of the United Nations, given that Article 10 of the Charter grants the General Assembly authority regarding "any questions or any matters" falling within the scope of the Charter. Moreover, paragraph 2 of Article 11 specifically grants the General Assembly jurisdiction concerning "any matter relating to the maintenance of international peace and security".

9. The request for the advisory opinion is related to a legal issue, as paragraph 18 of the United Nations General Assembly resolution 77/247 — which has been adopted correctly in

procedural terms — signifies. We trust and hope in the justice of the Court, anticipating it to not see compelling reasons for the Court to use its discretion to refrain from issuing an advisory opinion.

10. Mr President, Members of the Court, international human rights law and international humanitarian law apply to the occupied Palestinian territories and the Israeli occupying entity has the responsibility to fulfil its obligations with regard to the convention to which it has acceded, including the Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities.

11. The Israeli occupying entity is also obliged to do so on the basis of the four Geneva Conventions (Annual Report of the Secretary-General submitted to the Human Rights Council at its 34th session on 27 February 2017, pursuant to Human Rights Council resolution 31/34 on the human rights situation in the occupied Palestinian territories, emphasizing the continuous and chronic nature of human rights violations leading to these patterns of violations).

12. In this regard, we would like to emphasize that the Israeli occupying entity exercises regional jurisdiction over the occupied Palestinian territories as an occupying entity. Therefore, we call for and emphasize the necessity of compliance with the rules of international law and the decisions issued by your esteemed Court. We specifically refer to the Advisory Opinion issued by your esteemed Court regarding the legal consequences of the construction of the wall in the occupied Palestinian territories in the year 2004.

13. Mr President, Members of the Court, the Israeli occupying entity commits many violations and breaches of the principles of international law, and the international community has documented these violations, including those substantiated in reports by the Secretary-General of the United Nations submitted to the General Assembly or the Human Rights Council. These reports focus on investigating Israeli practices that impact the human rights of the Palestinian people and other Arab inhabitants in the occupied territories, examining the human rights situation in the occupied Palestinian territories.

14. Among these violations perpetrated by the occupying entity against humanity as a whole and specifically against the Palestinian people are:

(1) The Israeli occupying entity adopts multiple practices that rise to the level of genocide, referring specifically to the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, in particular, under Article II of the convention, which defines acts classified as genocide, the killing practices that have targeted civilians in residential areas, hospitals, schools and refugee shelters in Palestine in general, and in the Gaza Strip in particular, fall under the provisions of paragraphs *(a)*, *(b)* and *(c)* of that Article. Additionally, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949, under Articles 146, 147 and 148, stipulates the imposition of criminal sanctions on parties to the convention in case of non-compliance with its provisions.

(2) The oppressive practices affecting the city of Al-Quds, the capital of the Palestinian State, as well as the Holy Al-Aqsa Mosque, as the occupying entity attempts to impose a demographic reality aimed at a subsequent stage, which involves emptying the city of its original inhabitants and settling extremists and racists in it. This constitutes a violation of numerous resolutions, the latest being the United Nations General Assembly decision adopted on 21 December 2017. This decision came after a series of resolutions emphasizing the necessity of not to prejudice the demographic character of the Holy City of Al-Quds.

(3) Imposing a suffocating economic blockade on all industrial, agricultural and commercial activities is evident in campaigns of land confiscation and seizure of agricultural lands from Palestinian farmers. Additionally, the destruction and sabotage of infrastructure, industrial and commercial facilities owned by the Palestinians, along with the cutting-off of electricity, water and essential services, including communication and internet services, isolating the Palestinian people entirely from the world. We refer to the special report issued by the Social and Economic Commission for Western Asia, as outlined in resolution (A/77/90-E/2022/66), which illustrates the catastrophic economic and social repercussions resulting from the Israeli occupation and its impact on the living conditions of the Palestinian people.

(4) Imposing isolating measures by constructing the apartheid separation wall, depriving Palestinians of their right to move between Palestinian cities and forcing them to wait at crossing gates for long hours, sometimes extending to days without permission to pass. Additionally, the occupying entity enforces a permit system for movement that hinders the entry of goods and medical

supplies. Your esteemed Court issued its legal opinion on 9 July 2004, stating the illegitimacy of that wall based on the reasons outlined in the decision.

(5) Seizing Palestinian lands, establishing and expanding settlements on them — and the ongoing detention of thousands of Palestinians, including children and women, in detention centres under harsh conditions affecting their health and jeopardizing their safety without trials according to legal principles and without providing proper care, which could lead to deadly consequences. The occupation authorities also continue to deport Bedouins from the Palestinian population from their original areas to other regions, seizing their lands. The Israeli occupying entity *persists* in violating the basic human rights of the Palestinian people, as well as the principles of international humanitarian law regarding the protection of civilians during armed conflicts.

15. Mr President, based on the aforementioned, the occupying authorities are obliged to comply with the duty to respect the right of the Palestinian people to self-determination. They must immediately cease the violation of their international commitments and to respect the right of the Palestinian people to self-determination by ending all actions and measures that prevent and hinder the Palestinian people's right to self-determination. This includes the immediate termination of the occupation with all its associated actions and practices aimed at prolonging the duration of the occupation and continuing to deny the inherent rights under the rules of international law to the Palestinian people.

16. Mr President, Members of the Court, the Republic of Iraq is deeply concerned about the humanitarian suffering inflicted on the Palestinians throughout the State of Palestine, particularly in the Gaza Strip, due to the barbaric acts committed by the occupying Israeli entity by air strikes and rocket attacks targeting civilians. These acts constitute war crimes executed with criminal intent and serious violations of the laws of war.

17. The Israeli occupying entity *must be held accountable* for its actions, subjecting it to international criminal liability for violating the principles and charters of human rights and the Geneva Conventions related to human rights during armed conflicts.

18. We avail ourselves of the occasion of our presence in this great legal edifice today in order to embody the justice we see in your esteemed Court in a strong and resolute stance to support the Palestinian people in reclaiming their violated rights and lifting the injustice upon them. We call

upon your esteemed Court to take all measures and decisions that safeguard the lives of Palestinian men, women, children and elders, allowing them to enjoy a dignified and secure life where all human rights are achieved.

Mr President, Members of the Court, please accept our sincere thanks and appreciation to you and to your esteemed Court.

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

The Court adjourned from11.25 a.m. to 11.40 a.m.

The PRESIDENT: Please be seated. The sitting is open. I now call upon the delegation of Ireland to make its oral statement before the Court. I invite Mr Rossa Fanning to the floor.

Mr FANNING:

1. Mr President, Madam Vice-President, Members of the Court, I have the honour to appear before you this morning on behalf of Ireland.

2. These proceedings engage fundamental legal obligations, owed to the international community as a whole. As a member of that community, Ireland is committed to the protection and promotion of a global order based on respect for international law.

3. The backdrop to this hearing is a matter of profound concern to the Irish Government. The attacks launched by Hamas against Israel on 7 October were reprehensible and we have condemned them unequivocally. The rape and murder of civilians, destruction of civilian property, the taking of hostages, the use of human shields and the firing of indiscriminate rockets at urban centres constitute serious violations of international humanitarian law for which those involved must be held accountable.

4. However, international law limits the use of force in self-defence to no more than what is necessary and proportionate. Ireland's view is that these limits have been exceeded by Israel in its military response to the Hamas attack. This is manifest from the spiralling death toll, the extensive destruction of property, including homes, throughout Gaza, the displacement of up to 2 million

people and the ensuing, humanitarian catastrophe. Ireland has repeatedly called for a ceasefire and we are dismayed by the implications that these latest hostilities in Gaza may have for the prospect of resolving the wider Israeli-Palestinian conflict.

5. Members of the Court, this is a tragic conflict between two peoples and any solution — for it to endure — requires each to respect the rights of the other. For that reason, Ireland has been a consistent and vocal supporter of a comprehensive, two-State solution to the conflict. We lament the lack of progress made towards achieving that objective, but in the absence of any imminent prospect of a negotiated outcome, we believe that clarification now, by this Court, of the international law issues raised by the prolonged occupation of the Palestinian territory will assist in providing a stable foundation upon which to build a just resolution.

JURISDICTION

6. On the threshold question of jurisdiction, Ireland's view is that the questions put to the Court are legal questions within the meaning of Article 96 (1) of the Charter of the United Nations. Further, the request for an advisory opinion is, in our view, within the competence of the General Assembly. Finally, and as the Court has itself previously acknowledged[46], the fact that a legal question may have a political dimension does not oust the Court's jurisdiction.

7. Moreover, while it is well established that the Court enjoys a discretionary power *not* to provide an advisory opinion, it should only so decline for compelling reasons, which has never happened before, and in Ireland's view, should not happen now.

8. Several States have suggested that this request for an advisory opinion is an attempt to resolve a bilateral dispute without the consent of one of the parties to that dispute. We very much regret that Israel has chosen not to engage with the subject-matter of the request — in our discussions with the Israeli Government, we encouraged it to participate in these oral hearings so that the Court could have the benefit of its perspective. However, in our view, the issue of the Occupied Palestinian Territory is directly of concern to the United Nations itself and it goes much further than a mere bilateral dispute. As this Court noted in its *Advisory Opinion on the Interpretation of Peace Treaties*

[46] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, para. 13.

with Bulgaria, Hungary and Romania[47], even where a request for an advisory opinion relates to a legal question actually pending between States, its opinion is given not to the States but to the organ requesting it, in this case the General Assembly.

9. It has also been suggested that this Court ought not to opine because the questions are one-sided in nature. However, it is well established that the Court may interpret — or even reformulate — a question if it is not adequately formulated, or where the question does not reflect the "legal questions really in issue"[48]. Similarly, where a question is vague or ambiguous, the Court may clarify it before providing its opinion[49].

10. A further argument advanced by some is that the Court should narrow the question to a request for advice regarding the role of the General Assembly in promoting a resolution to the conflict within the established negotiating framework. However, the Court has previously rejected a similar submission, holding that "it is not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs."[50]

11. We do not agree therefore that a ruling by this Court would undermine the established negotiating framework. On the contrary, this Court's authoritative clarification of the important legal issues raised would provide the essential foundation upon which to build a lasting, comprehensive and just resolution of the Israeli-Palestinian conflict.

THE SUBSTANTIVE ISSUES

12. Mr President, Israel has been in occupation of the Palestinian Territory since 1967. Accordingly, in that territory, it is obliged to respect applicable international humanitarian law, including the law of military occupation, and international human rights law.

13. The defining feature of Israel's occupation of Palestinian territory in the West Bank, including East Jerusalem, has been continuous settlement activity. In our Written Statement, we have drawn on the authoritative reports of the Secretary-General and the High Commissioner for Human

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[47] *Interpretation of Peace Treaties (First Phase),* Advisory Opinion, p. 71.

[48] *Chagos* Advisory Opinion, p. 129, para. 135.

[49] *Ibid.*

[50] *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 237, para. 16.

Rights, to set out the numerous different ways in which this has occurred. But in summary, we say the following:

— Israel has used different means to take and exercise control for non-military purposes over as much land in the Occupied Palestinian Territory as possible[51].

— Once in control, Israel has undertaken permanent construction on this land, in particular developing or encouraging the development of permanent settlements[52], onto which it has incentivized large numbers of its own citizens to transfer[53].

— Through its actions, Israel has fundamentally altered the demographics of the West Bank. As of 2022, almost 700,000 Israeli citizens were living in settlements in the West Bank, including in East Jerusalem[54].

— Israel has extended the application of domestic Israeli law to those living in settlements, blurring the distinction between Israel and the Occupied Palestinian Territory [55]; and

— Israel has transferred the exercise of authority in the Occupied Palestinian Territory in certain areas from military command to civilian control, integrating administration of the territory into that of Israel[56].

14. By transferring parts of its own civilian population into the Occupied Palestinian Territory, Israel has violated Article 49 (6) of the Fourth Geneva Convention[57]. It has continued to do this notwithstanding the Court's confirmation of its unlawfulness in the *Wall* case[58] and despite being exhorted by both the Security Council and the General Assembly to cease this practice[59].

15. Israel has also continued to unlawfully destroy and appropriate property throughout the Occupied Palestinian Territory as part of its policy of encouraging and facilitating the expansion of

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[51] See Written Statement of Ireland, paras. 19-22.

[52] See *ibid.*, paras. 23-24.

[53] See *ibid.*, paras. 25-27.

[54] See *ibid.*.

[55] See *ibid.*, paras. 28-29.

[56] See *ibid.*, paras. 30-34.

[57] 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.

[58] *Wall* Advisory Opinion, p. 183, para. 120.

[59] See, for example, UNSC resolution 1515, 19 Nov. 2003, UN doc. S/RES/1515(2003); UNSC resolution 2334 (2016), 23 Dec. 2016, UN doc. S/RES/2334(2016); and UNGA resolution 77/126, 12 Dec. 2022, UN doc. A/RES/77/126.

settlements[60]. This destruction and appropriation of property cannot reasonably be justified by military necessity. Rather, it is clear that it has been done to facilitate — and indeed encourage — the expansion of settlements. Such destruction and appropriation of property clearly breaches the Fourth Geneva Convention and the laws and customs of war codified by the 1907 Hague Regulations[61].

16. There has also been a recent, marked increase in reports of Palestinian civilians being subjected to sustained, serious violence by Israeli settlers, with little or no protection from the Israeli security forces, contrary to international humanitarian law. The security forces have been reported, and recorded, not only watching this violence without intervening, but in some instances, even participating in it themselves[62]. This has escalated since 7 October and the Secretary-General has warned that tensions have now reached "boiling point"[63].

17. The Secretary-General and High Commissioner have expressed concern that this violence, particularly when considered in light of the appropriation and destruction of Palestinian property, has compelled Palestinians to leave their homes, their farms and their grazing grounds. The Secretary-General has noted that the coercive environment created by Israel could amount to forcible transfer, a grave breach of the Fourth Geneva Convention which may amount to a war crime[64].

ANNEXATION

18. Let me now turn to the question of annexation.

19. The evident permanence of the settlements can only be explained, in Ireland's assessment, by Israel's intention of annexing the land upon which they are built. In our view, the development and expansion of settlements clearly demonstrate that Israel is — and has been — engaged in a

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[60] Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including Jerusalem, and the occupied Syrian Golan of 3 October 2022, UN doc. A/77/493, paras. 17-27; Report of the United Nations High Commissioner for Human Rights on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in occupied Syrian Golan of 15 March 2023, UN doc. A/HRC/52/76, paras. 9, 25, 34, 60; see also UNSC resolution 2334 (2016), preambular, para. 4.

[61] Hague Regulations annexed to the 1907 Hague Convention with respect to the Laws and Customs of War on Land.

[62] Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 25 Oct. 2023, UN doc. A/78/554, Sec. IV (B).

[63] "Implementation of Security Council resolution 2334 (2016)", report of the Secretary-General, 14 Dec. 2023, UN doc. S/2023/988, para. 59.

[64] Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 25 Oct. 2023, UN doc. A/78/554, para. 14.

process of annexation of that land for decades. The absence of any declaration of annexation or formal *de jure* act of incorporation over most of the West Bank is immaterial. Despite references in the current Israeli Government's coalition agreements, which the Secretary-General describes as promoting a policy of "application of sovereignty" over the West Bank[65], previous history suggests that no announcement or formal act of incorporation may occur in the near future[66].

20. Nevertheless, in Ireland's view, Israel is already engaged in the process of annexing Palestinian territory. It is doing so *de facto*, through its policy of encouraging demographic change in that territory by population transfer and by the continuous development and maintenance of permanent settlements and infrastructure. Ireland is concerned that it may also be doing so *de jure*, by increasingly extending the application of domestic Israeli law and civilian administration to the settlements in the Occupied Palestinian Territory, thereby integrating them into its own territory and erasing the differences in law between Israel and the settlements.

21. But whether *de facto*, *de jure* or both, this process of annexation is in clear breach of the prohibition in international law against the acquisition of territory by threat or use of force, a fundamental principle of international law. To assert that this is not the case simply because Israel has not formally declared annexation would render the prohibition devoid of all meaning. That would permit States to acquire territory by force, without legal consequence, simply by declining to adopt a formal act of annexation or incorporation.

UNLAWFUL OCCUPATION

22. International humanitarian law does not classify a military occupation as either lawful or unlawful per se — rather it recognizes that military occupation may occur during the course of an armed conflict and it sets down rules to regulate the conduct of the occupying Power, in particular its armed forces. Military occupation is necessarily temporary in so far as international law prohibits the acquisition of territory by force. Occupation does not confer sovereignty — rather, it is a temporary exception to sovereignty and, accordingly, it cannot be of indefinite duration.

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[65] *Ibid.*, para. 5.

[66] See Written Statement of Ireland, para. 40.

23. Prolonged occupation over an extended period of time therefore unavoidably raises legal questions, in particular whether it constitutes a disguised form of annexation and/or a determined effort to deny the people of an occupied territory the exercise of their right to self-determination. In either case, the legality of the occupying Power's presence in the territory inevitably arises. While it is of course possible that a military occupation effected by force may be undertaken in exercise of the right in international law to the use of force in self-defence, any such occupation may involve no more — and may endure no longer — than is necessary and proportionate to the armed attack to which it is a response.

24. In the case of the Occupied Palestinian Territory, Israel's military occupation commenced in 1967 and has continued now, uninterrupted, for some 57 years. It has also entailed, as I have said, extensive and continuous, permanent and deliberate settlement building. Neither the duration of the occupation nor the scale and extent of settlement activity is, in Ireland's view, justified or permitted by the law regulating the use of force in self-defence. Indeed, if the security of one people can only be achieved by the occupation — over so many decades — of the territory of another people, one has to wonder whether there can be any military solution to the problem that it purports to address. In our view, the only effective solution to the problem can be a political one.

SELF-DETERMINATION

25. Mr President, I wish to turn now to the question of self-determination. As submitted in our Written Statement, Ireland has concluded that — by its prolonged occupation of Palestinian lands and continuous settlement activity on those lands — Israel has prevented the exercise by the Palestinian people of their right to self-determination. The principle of self-determination is a fundamental principle of international law, enshrined in the Charter of the United Nations and the two 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. The content of that principle was elaborated in the 1970 Declaration on Friendly Relations[67], adopted by consensus at the General Assembly. That declaration makes clear that

> "[e]very State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples . . . bearing in mind that

[67] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by consensus as resolution 2625/XXV by the United Nations General Assembly, UN doc. A/RES/2625 (XXV).

> subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter".

26. The Declaration solemnly proclaims that "(e)very State has the duty to refrain from any forcible action which deprives peoples . . . in the elaboration of the present principle of their right to self-determination and freedom and independence".

27. In the *Wall* case[68], the Court found that the construction of the wall and its associated régime severely impeded the exercise by the Palestinian people of their right to self-determination. It therefore breached Israel's obligation to respect that right[69]. In Ireland's view, the combination of Israel's prolonged occupation of the Occupied Palestinian Territory and its escalating settlement activity has done so on a far greater scale. That escalating activity has increasingly fragmented Palestinian presence upon — and restricted Palestinian use of — the land and the natural resources of the Palestinian people. It threatens the viability of a future Palestinian State. The nature, scale and duration of settlement activity is such that its purpose can only be to permanently obstruct the exercise of the Palestinian people's right to self-determination.

CHARACTER OF THE LEGAL OBLIGATIONS CONCERNED

28. Both the prohibition of acquisition of territory by threat or use of force and the principle of self-determination are fundamental principles of international law, as are the basic rules of international humanitarian law. It is widely recognized that these fundamental principles have the charactery of peremptory norms of general international law, or *jus cogens*, from which derogation is never permitted — or, as the Court described them in its Advisory Opinion on the *Threat or Use of Nuclear Weapons*, "intransgressible principles of international customary law"[70]. In turn, peremptory norms of general international law give right to obligations owed to the international community as a whole (obligations *erga omnes*), in relation to which all States have a legal interest, a conclusion also recently reached by the International Law Commission[71].

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[68] *Wall* Advisory Opinion, p. 172, para. 88, citing *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29; see also *Chagos* Advisory Opinion, para. 180.

[69] *Wall* Advisory Opinion, para. 122.

[70] *Nuclear Weapons* Advisory Opinion, p. 257, para. 79.

[71] International Law Commission Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*), 2022.

SERIOUS BREACHES OF PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW AND OBLIGATIONS *ERGA OMNES*

29. Ireland has, with regret, concluded that by its prolonged occupation of Palestinian territory and the settlement activities it has conducted there for more than half a century, Israel has committed serious breaches of a number of peremptory norms of general international law and the corresponding *erga omnes* obligations to which they give rise, namely:

— the basic rules of international humanitarian law;

— the right to self-determination of the Palestinian people; and

— the prohibition of acquisition of territory by force.

LEGAL CONSEQUENCES

30. Under the customary international law of State responsibility, where a State breaches an international obligation it commits an internationally wrongful act. Unless its wrongfulness is otherwise precluded, that act entails the international responsibility of the State concerned and it involves legal consequences. Where the act amounts to a serious breach of both a peremptory norm and a corresponding obligation *erga omnes*, this Court has concluded that it involves legal consequences for all States, namely:

— first, the "obligation not to recognize the illegal situation resulting from" the serious breach;

— second, the "obligation not to render aid or assistance in maintaining the situation created by" the serious breach;

— third, the obligation to co-operate to bring the serious breach to an end, or as the Court put it in the specific circumstances of the *Wall* case, "to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of their right to self-determination is brought to an end"[72].

CONSEQUENCES FOR ISRAEL

31. In the *Wall* case, the Court found that Israel was obliged to end the breaches of its legal obligations, including those under international humanitarian law, and its duty to respect the right of the Palestinian people to self-determination, and to make reparation for the damage caused by those

[72] *Wall* Advisory Opinion, p. 200, para. 159.

breaches[73]. In the present case, the law of State responsibility likewise obliges Israel to bring to an end the serious breaches that I have outlined to the Court, including by the reversing of its settlement activity and the making of reparation for the damage arising by way of restitution and compensation, as appropriate.

CONSEQUENCES FOR OTHER STATES

32. For all States, as members of the international community as a whole to which the relevant obligations *erga omnes* are owed, the legal consequences of these serious breaches are, in Ireland's view, straightforward. All States are obliged to co-operate to bring these breaches to an end through lawful means, not to recognize as lawful the situation created by them and not to render aid or assistance in maintaining that situation.

33. In particular, States are obliged to co-operate to bring to an end Israel's serious breach of its obligation to respect the right of the Palestinian people to self-determination or, as the Court found in the *Wall* case, to see to it that any impediment to the exercise of that right is brought to an end[74]. This includes co-operation by States through the United Nations and, as appropriate, other international organizations, including the European Union.

34. As regards the obligation not to recognize as lawful the situation created by these serious breaches, the Court has provided an example of how this may be achieved in its Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia*. There, the Court found that the duty of non-recognition obliged States, *inter alia*, "to abstain from entering into economic and other forms of relationship or dealings with South Africa . . . which may entrench its authority over the [territory of Namibia]"[75].

35. This was also the approach taken by the European Union in the case of the annexation by the Russian Federation of Crimea in 2014, when it implemented a broad range of diplomatic, economic and other measures intended to preclude any implied recognition of the annexation. Those

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[73] *Wall* Advisory Opinion, pp. 197-198, paras. 149-153.

[74] *Wall* Advisory Opinion, p. 200, para. 159.

[75] *Namibia* Advisory Opinion, pp. 55-56, paras. 121-124.

measures included a ban on imports of goods originating in the annexed territory and a prohibition against investing in it[76].

36. In the present case, we say that States are obliged not to render aid or assistance in maintaining the situation created by Israel's breach of its obligation to respect the right of the Palestinian people to self-determination[77]. The General Assembly and Security Council have, in the past, called upon all States to refrain from rendering any assistance to the maintenance of situations of denial of self-determination[78].

37. In Ireland's view, these obligations require all States, as well as international organizations with external trade competence (in the case of Ireland, the European Union), to review their trading relationships with the settlements in the Occupied Palestinian Territory. It requires them to take steps to prevent trade that assists in the maintenance of the situation created by the settlement activity, or that implicitly recognizes or serves to entrench or legitimize Israel's settlement or annexation of that territory.

CONCLUSION

38. Mr President, Members of the Court, Ireland remains committed to the realization of the two-State solution endorsed by the Security Council: a safe and secure Israel, and an independent, democratic, contiguous, viable and sovereign Palestinian State, living side by side in peace, within secure and recognized borders based on those of 1967, with Jerusalem as the capital of both States. This is the established framework within which it was agreed that the solution would be found, which is why recent statements by Israel's Prime Minister, in which he openly rejected the two-State solution, have caused such widespread international dismay.

39. The solution must be built on a foundation of respect for international law, but especially, respect for the right to self-determination.

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[76] The EU non-recognition policy for Crimea and Sevastopol, Fact Sheet, Mar. 2016, available at: https://www.europarl.europa.eu/meetdocs/2014_2019/documents/d-ru/dv/dru_dua_20161214_07/dru_dua_20161214_07en.pdf.

[77] See Article 41 (2), International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001; *Wall* Advisory Opinion, p. 200, para. 159.

[78] See, for example, UNSC res. 218 of 23 November 1965, S/RES/218(1965), paras. 4, 6; and UNGA res. 2022 (XX) of 5 November 1965, A/RES/2022(XX), paras. 5-6.

40. In the circumstances, Ireland encourages this Court to provide its authoritative clarification of these essential legal issues to the General Assembly, as requested. May it please the Court.

The PRESIDENT: I thank the delegation of Ireland for its presentation. I invite the next participating delegation, Japan, to address the Court. I call upon Mr Tomohiro Mikanagi to take the floor.

Mr MIKANAGI:

1. Mr President, Members of the Court, it is an honour to appear before you on behalf of the Government of Japan.

2. Before addressing legal questions put to the Court by the General Assembly, please allow me to briefly reiterate Japan's position on the Middle East Peace Process, which is stated in our Written Statement. Japan firmly believes that a two-State solution, where Israel and a future independent Palestinian state live side by side in peace and dignity, remains the only viable path for both peoples. Japan emphasizes that the conflict between the Israeli and the Palestinian sides should be resolved not through any violent acts or unilateral action but through negotiations and efforts to build mutual trust among the parties concerned, while respecting international law.

3. Now, in the following oral submissions, Japan wishes to focus exclusively on the issues relating to the acquisition of territory by force in so far as they are relevant to the questions put to the Court by the General Assembly. Japan considers that the prohibition of the acquisition of territory by force is an essential element of the rule of law among nations to which Japan is profoundly attached, and of particular importance to the peace and stability in the region and the international community. Japan believes that this prohibition provides an important safeguard for the international community against the return of rule by force.

4. United Nations General Assembly resolution 2625 (XXV), which is commonly called "the Friendly Relations Declaration", states that "[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal". The Court clarified in the *Wall* Advisory Opinion that the illegality of the acquisition of territory by force is a corollary of the prohibition of use of force incorporated in the Charter of the United Nations. In the same vein, on 18 April 2023, G7 Foreign Ministers, under the Japanese presidency, reaffirmed this prohibition. The relevant paragraph of the

Communiqué stated: "The prohibition on the acquisition of territory resulting from the threat or use of force, reaffirmed in the Friendly Relations Declaration of 1970, should be observed in good faith."[79]

5. Our statement today consists of three parts. First, I will address the issue of which territory the prohibition of acquisition of territory by force applies to (A). In the second part, Professor Dapo Akande will speak about what constitutes acquisition by force (B). In the third part, Professor Akande will examine the relationship between this prohibition and the right to self-defence (C).

A. "TERRITORY" TO WHICH THE PROHIBITION OF ACQUISITION OF TERRITORY BY FORCE APPLIES

6. Mr President, let me begin with the first point that Japan wishes to make. The prohibition of territorial acquisition by force does not apply only to territory of States within settled or internationally recognized borders. Even in the cases of territory where internationally recognized borders do not exist, that prohibition extends to territory that is under the peaceful administration and could also apply to uses of force across international lines of demarcation.

I. Cases where internationally recognized borders do not exist

7. The paragraph of the Friendly Relations Declaration relating to the principle of non-acquisition of territory by force states that "the territory of a State shall not be the object of acquisition by another State". It is not surprising to find the focus on attempts by States to acquire territory of another State. As an example, in October 2022, the United Nations General Assembly condemned the attempted illegal annexation of four regions of Ukraine[80]. In that situation, the prohibition of acquisition of territory by force clearly applies to those territories as they are within the internationally recognized borders of Ukraine.

8. However, the Friendly Relations Declaration seems to go further than acknowledging the prohibition of the acquisition of the territories within the internationally recognized borders of States

[79] G7 Foreign Ministers' Communiqué, 18 Apr. 2023, Karuizawa, Nagano, Japan, available at https://www.mofa.go.jp/files/100492731.pdf.

[80] UNGA resolution ES-11/4 titled "Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations" adopted on 12 October 2022, operative paragraph 2.

by force. In the same paragraph, it proclaims that "[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal", without reference to "the territory of a State".

9. Japan takes the position that where sovereignty over a territory is not internationally recognized, but where the territory is under peaceful administration by a State that has not itself occupied the territory by force, the prohibition of acquisition of territory by force applies also. This principle follows from the reasoning adopted in the decision of the Eritrea-Ethiopia Claims Commission[81]. As this Court has recognized in the *Wall* Advisory Opinion, the prohibition of territorial acquisition by force follows from the prohibition of force. Therefore, the scope of the prohibition should be determined with reference to the interpretation of Article 2, paragraph 4, of the United Nations Charter. The Eritrea-Ethiopia Claims Commission found that Eritrea violated Article 2, paragraph 4, of the United Nations Charter by attacking and occupying in 1998 the town of Badme, which the Commission found was under "peaceful administration" by Ethiopia at the time. In this regard, the G7 Foreign Ministers' Communiqué in April 2023 also stated: "We strongly oppose any unilateral attempts to change the peacefully established status of territories by force or coercion anywhere in the world."

10. Furthermore, the Friendly Relations Declaration states that "[e]very State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect". This declaration indicates that the prohibition of acquisition of territory by force could also apply to a territory where internationally recognized borders do not exist but where parties are bound to respect certain international lines of demarcation.

II. Relevant Security Council resolutions

11. Article 2, paragraph 4, of the United Nations Charter itself refers to "the Purposes of the United Nations", and Japan takes the position that Article 1, paragraph 1, of the UN Charter must constitute an important context and object and purpose for the interpretation of Article 2, paragraph 4. The Security Council has the primary responsibility for the maintenance of international

[81] Eritrea/Ethiopia, Partial Award, *Ius Ad Bellum* Ethiopia's Claims 1–8, 19 Dec. 2005, paras. 10-16 available at https://pcacases.com/web/sendAttach/763 (2006), International Legal Materials (ILM), Vol. 45, p. 430.

peace and security, and its view should be given significant weight in determining whether the prohibition of acquisition of territory by force applies to a territory.

12. With regard to the Occupied Palestinian Territory, preambular paragraph 2 of Security Council resolution 242 emphasizes "the inadmissibility of the acquisition of territory by war". It also affirmed that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of principles including the "[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict". Japan is of the view that due consideration should be given to the relevant resolutions of the Security Council when examining the question of whether the prohibition of acquisition of territory by force applies to a certain territory.

13. Mr President, Madam Vice-President, Members of the Court, I thank you for your kind attention. Now, I would like to give the floor to Professor Akande.

The PRESIDENT: I thank Mr Tomohiro Mikanagi. I now give the floor to Professor Dapo Akande. Professor, you have the floor.

Mr AKANDE:

1. Mr President, Members of the Court, it is an honour to appear before you, and to do so on behalf of Japan. The Court has heard oral pleadings on a range of legal issues arising from Israel's actions in the Occupied Palestinian Territory. Japan focuses on a specific issue — the scope of the application of the principle of non-acquisition of territory by force.

2. As Mr Mikanagi has just set out, there are three points that are important with regard to the application of the principle. He has set out Japan's position on the *first issue*, namely the issue of which territory the prohibition of acquisition by force applies to.

3. I will deal with two other issues relating to the principle. The *second issue* relates to what constitutes acquisition by force for the purposes of this principle, and the *third* relates to the relationship between the principle and the right to self-defence enshrined in Article 51 of the United Nations Charter.

B. WHAT CONSTITUTES "ACQUISITION BY FORCE"?

4. Let me begin with the question of what constitutes "acquisition by force".

I. Does the prohibition of "acquisition by force" extend to *de facto* as well as *de jure* annexations?

5. Mr President, the acquisition of territory by force consists of two elements, namely (i) the establishment of control over the territory through forcible measures and (ii) the intention to appropriate that territory permanently[82]. By "acquisition" or indeed "annexation" of territory by force, we mean a situation where a State attempts to acquire territorial title on the basis of forcible acts and where the State does not otherwise have valid title to that territory.

6. The clearest case of annexation is an attempt to annex occupied territory *de jure*. In such a circumstance, the occupying State formally declares its sovereignty over the annexed territory.

7. However, in the *Wall* Advisory Opinion, this Court indicated that annexation could also take place *de facto* where the actions of a State lead to what the Court called a "fait accompli", that is, a situation on the ground which becomes permanent and which others are compelled to accept[83]. A State seeking to avoid the denunciation of the international community may be incentivized to refrain from formally declaring the annexation of territory. Without clearly expressing its intention to annex the territory, it may seek to gain permanent control over a territory it occupies by engaging in military operations and taking a series of measures that make it materially impossible for other claimants to restore the *status quo ante* without risking death, physical injury or damage to property. In other words, the occupying State may create what you called a "fait accompli" through these measures.

8. The effect of the prohibition of acquisition of territory by force would be seriously undermined if States were allowed to circumvent the prohibition by simply obfuscating their true intentions to annex a territory and coercing other claimants to accept its permanent control over the territory through measures that create a "fait accompli". It is therefore important to clarify in what circumstances such measures would constitute *de facto* annexation and amount to an unlawful attempt to acquire territory by force.

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[82] See Hofmann, "Annexation" in Max Planck Encyclopedia of Public International Law (January 2020) & Phillipson, *Termination of War and Treaties of Peace* (EP Dutton 1916) p. 9.

[83] *Wall* Advisory Opinion, p. 194, para. 121.

II. Acts which may indicate hidden intention to acquire territory

9. In the *Wall* Advisory Opinion, the Court considered that Israel's construction of a wall in the Occupied Palestinian Territory as well as the creation of an administrative régime facilitating the establishment of settlements of Israeli citizens in areas lying between the Green Line and the wall are the types of actions which would be tantamount to *de facto* annexation if it created a "fait accompli" that had effectively become permanent[84].

10. Japan considers that certain acts which have continuous coercive effect in imposing control over territory may create a "fait accompli" and are likely to indicate intention to maintain permanent control over the territory. The following acts by occupying States may have such continuous coercive effects:

— *First*, large-scale alteration of the demographic composition of the territory, backed by military and other physical power, including through expropriation of land and eviction of the population.

— *Second*, the construction and continued maintenance by an occupying Power of a network of physical infrastructure, particularly where these represent such significant financial investment that they may be deemed to be intended to subsist over a significant period of time. This may include, for example, roads, communication systems, healthcare facilities or large-scale military or law enforcement facilities.

— *Third*, the continuous forcible seizure and exploitation of the natural resources, including water, by an occupying Power.

11. These acts do not necessarily cause death, injury or destruction, but when they are implemented cumulatively at a significant scale and sustained for a long period, they would have continuous, even irreversible, effect on the territory. In such a case there may be evidence that the occupying State's intention is to permanently establish sovereignty over the relevant area, even if it is doing so incrementally. If such acts are accompanied by statements of State officials affirming the irreversibility of measures or even asserting the intent to establish sovereignty over the occupied territories, the measures I have just mentioned above are even more likely to indicate intention to acquire territory and thus amount to a prohibited attempt to acquire territory by force.

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[84] *Wall* Advisory Opinion, pp. 168-171, paras. 79-85.

C. RELATIONSHIP WITH THE RIGHT OF SELF-DEFENCE

12. Mr President, Members of the Court, having outlined Japan's views on what constitutes the "acquisition of territory by force", permit me now to turn to the relationship between the principle of non-acquisition of territory by force and States' inherent right to self-defence contained in Article 51 of the United Nations Charter.

13. The key question here is whether a State that does not otherwise have valid title to territory can acquire title through a use of force because the State claims to be acting in self-defence. Japan rejects this argument. Two alternative but interlinked arguments support this position. The first is that the principle prohibiting acquisition of territory by force precludes *any* acquisition of territorial title through force, regardless of whether that force is unlawful or permitted as an exercise of self-defence. Alternatively, and in any event, uses of force resulting in the annexation of territory will never be lawful as exercises of self-defence since permanent annexation can never be a proportionate response to an armed attack.

I. The lawfulness of the initial use of force is irrelevant

14. I begin by outlining the first argument. Japan submits that the principle prohibiting forcible acquisition of territory is properly understood as providing that the use of force is never a valid basis for acquiring title, even if the initial use of force by the State could have been lawful[85].

15. This blanket prohibition is a necessary consequence of the complete abolition of the right of territorial conquest in the context of the United Nations Charter. In the *Wall* Advisory Opinion, the Court described the principle on the illegality of territorial acquisition resulting from the use of force as the "corollary" of the prohibition against the use of force itself[86]. It is also connected to other fundamental principles of international law, in particular the right to self-determination of peoples as set out in the Friendly Relations Declaration[87] and recognized by this Court[88]. It accordingly reflects

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[85] Marcelo G. Kohen, *Possession Contestée et Souveraineté Territoriale* (Graduate Institute Publications 1997), pp. 395-396; D. W. Bowett, "International Law Relating to Occupied Territory: A Rejoinder" (1971), 87 *LQR* 473, p. 475.

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

[87] UNGA, Declaration on the Principles of International Law concerning Friendly Relations and Co-Operation among States, res. 2625 (XXV) (adopted 24 Oct. 1970), UN doc. A/RES/2625 (XXV), Annex ("Friendly Relations Declaration"). See also UNGA, Declaration on the granting of independence to colonial countries and peoples, res. 1514 (XV) (adopted 14 Dec. 1960), UN doc. A/RES/1514 (XV), and, most recently, UNGA, Universal realization of the right of peoples to self-determination, res. 77/207 (adopted 15 Dec. 2022), UN doc. A/RES/77/207.

[88] *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29; *Wall* Advisory Opinion, pp. 171-172, para. 88; *Chagos* Advisory Opinion, pp. 131-135, paras. 144-161.

a fundamental shift in international law in the twentieth century, particularly after the entry into force of the United Nations Charter, which sought to minimize unilateral recourse to force in international relations.

16. The prohibition on the use of force and the prohibition on acquiring territory by force form part of a coherent scheme with the right to self-defence. The right to self-defence provides for States to have recourse to force in order to defend their people and to preserve territory they already have. It does not allow a right to use force to gain additional territorial title[89].

17. I would also like to highlight that a finding by the Court that conquest could confer title upon a State where force was used in self-defence would, in practice, be liable to widespread abuse[90]. The proper scope of self-defence in international law is controversial. States frequently make contested claims that some use of force or another is lawful as an exercise of self-defence. States seeking to acquire territory by force could accordingly seek to exploit this ambiguity. This would threaten to undermine the principle and, alongside it, the prohibition on the use of force.

18. Japan's view on the proper scope of the principle is supported by the General Assembly's Friendly Relations Declaration, which states and I quote, again, because you've heard it many times: "The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force . . . *No* territorial acquisition resulting from the threat or use of force shall be recognized as legal."[91]

19. This part of the declaration contains no exception for force used in self-defence and does not limit the principle prohibiting territorial acquisition by force to unlawful uses of force. By contrast, in the sentence immediately prior to the one that I have just quoted, the declaration prohibits "military occupation resulting from the use of force *in contravention of the provisions of the Charter*"[92], indicating that where the use of force is not prohibited by the Charter, military occupation may be lawful[93].

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[89] Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Clarendon Press 1996), p. 205.

[90] R.Y. Jennings, *The Acquisition of Territory in International Law* (Manchester University Press 1963), p. 56.

[91] Friendly Relations Declaration, First principle (emphasis added).

[92] *Ibid.* (emphasis added).

[93] Pierre Klein and Vaios Koutroulis, 'Territorial disputes and the use of force' in Marcelo G. Kohen and Mamadou Hébié (eds.), *Research Handbook on Territorial Disputes in International Law* (Edward Elgar 2018), p. 239.

20. This conclusion — conclusion that the declaration endorses a blanket prohibition on acquisition of territory by force — is not affected by the declaration's subsequent reaffirmation that it "shall [not] be construed as affecting" provisions of the Charter. The right of self-defence regulates the permissibility of uses of force in response to an armed attack, rather than dealing with the question of whether States can, through such use of force, acquire title to territory. The Friendly Relations Declaration accordingly clarifies that the answer to the latter question is "no" without purporting to affect the scope of self-defence as a justification for the use of force.

II. Annexation of territory goes beyond what is proportionate in self-defence

21. Mr President, Members of the Court, let me turn to the alternative point with regard to the relationship between the prohibition of territorial acquisition by force and the right of self-defence — and this is my final point: annexation of territory *can never* meet the narrowly drawn requirements of the right of self-defence.

22. As the Court has repeatedly pointed out, any purported exercise of the right to self-defence must be necessary and proportionate[94]. Self-defence, by definition, can only justify the taking of temporary measures in order to achieve its aims. The aim of self-defence is limited to defending the attacked State and its people. Thus, even when a State has suffered an armed attack, it can never be proportionate to *permanently deprive* a people of its territory[95].

23. In this regard, it is worth recalling that the acquisition of territory by force has been rejected in the context of States claiming to act in self-defence. The Security Council's response to Iraq's invasion and purported annexation of Kuwait in 1991 is worth noting. While demanding that Iraq "rescind immediately its actions", the Security Council, in its resolution 686, simultaneously affirmed "the commitment of all Member States to the independence, sovereignty and territorial integrity of *Iraq and Kuwait*"[96]. It is thus clear that the territory of Iraq had not become liable to

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[94] E.g. *Nuclear Weapons* Advisory Opinion, p. 245 para. 41; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 94, para. 176; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I. C. J. Reports 2003*, p. 183, para. 43.

[95] R. Y. Jennings, *The Acquisition of Territory in International Law* (Manchester University Press 1963), p. 55; O'Meara, *Necessity and Proportionality and the Right of Self-Defence in International Law* (OUP, 2021), p. 139.

[96] UNSC resolution 686, 2 Mar. 1991, UN doc. S/RES/686 (1991), emphasis added.

annexation even if States were to act in defence of Kuwait[97]. Another relevant example is, of course, Security Council resolution 242, which emphasized "the inadmissibility of the acquisition of territory by war" without drawing any distinction between lawful and unlawful uses of force[98].

24. Mr President, Members of the Court, I close my submissions by once again expressing Japan's position that the principle of non-acquisition of territory by force is an important norm which reinforces the *jus cogens* prohibition of aggression and is central to the maintenance of the rule of law among nations. This concludes the oral pleadings of Japan and I thank you for your attention.

The PRESIDENT: I thank the delegation of Japan for its presentation. I invite the next participating delegation, Jordan, to make its oral statement before the Court, and call His Excellency Ayman Safadi to the podium.

Mr SAFADI:

INTRODUCTION

1. Bismillah al-Rahman al-Rahim. Mr President, Members of the Court, on behalf of the Hashemite Kingdom of Jordan, I stand before you today, as the evilness of the Israeli occupation of Palestine is being displayed in the bloodiest and most inhumane way. The Israeli aggression on Gaza, which your esteemed Court has indicated warrants examination of plausible genocide, rages on. It is shattering thousands of lives. It is destroying a community of 2.3 million Palestinians, who have already been suffering the oppression of occupation.

2. Half a million Palestinians in Gaza are at Integrated Food Security Phase Classification level five, facing starvation. This number is four times that in the whole world.

3. In Gaza, Palestinians are dying by Israel's war. They are also dying from hunger and lack of medication, as Israel prevents the delivery of food and medicine, in violation of international humanitarian law, and in defiance of the provisional measures you have ordered.

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[97] Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Clarendon Press 1996), p. 215.

[98] UNSC resolution 242, 22 Nov. 1967, UN doc S/RES/242 (1967).

4. This aggression has to end, and end immediately. Those responsible for it must face justice. No country must be allowed to be above the law. Israel is acting, and has been allowed to act, in complete disregard of international law. That cannot continue.

5. The occupation is unlawful. It is inhumane. It must end.

6. Yet Israel has been systematically consolidating the occupation. It is blatantly denying Palestinians' right to self-determination. Its illegal unilateral measures are creating new facts on the ground that are killing all prospects for peace.

7. Settlements, illegal under international law, are growing in numbers and are spreading farther in occupied Palestinian land. The number of settlers has grown from 280 thousand in 1993, when the Oslo Accords were signed, to over 700 thousand today — nearly a 150 per cent increase. Settler terrorism is a growing evil. Its victims are innocent Palestinians, their homes and their livelihoods.

8. As the occupying Power, Israel has a legal obligation to protect civilians, to preserve cultural and historical heritage and to refrain from forcing demographic changes. It is constantly and intentionally violating this obligation.

9. Israel is forcing demographic changes in the occupied Palestinian territory, destroying cultural and historical Palestinian heritage, confiscating and annexing Palestinian land, driving Palestinians out of their homes, their farms, their villages and their cities.

10. It is illegally detaining thousands of children, men and women, and subjecting them to physical and mental torture, humiliation and abuse.

11. Israel is violating the right of Muslims and Christians to freedom of worship. The Israeli Government is severely restricting Muslims' right to pray at Al Aqsa Mosque and is taking no real action to protect Christian priests from humiliation and abuse by Israeli extremists. Throughout decades of occupation, Israel has been working on changing the Arab Muslim and Christian identity of the holy sites in occupied Jerusalem.

12. Mr President, Members of the Court, peace is the right of all peoples of the region. But there can be no peace until occupation ends. There can be no peace until the right of the Palestinian people to self-determination is realized, by the establishment, and global recognition, of an

independent, sovereign Palestinian State, with East Jerusalem as its capital, on 4 June 1967 lines, that can live side by side Israel in peace and security.

13. The Hashemite Kingdom of Jordan has been relentlessly working for peace. We have suffered the consequences of conflict. We know the value of peace, to us, to the region and to the world. And we know what it takes to achieve peace: the end of occupation and justice, freedom and statehood for the Palestinians. The two-State solution must be implemented and the Palestinian State must be recognized and accepted as a full Member of the United Nations.

14. And for the sake of peace and justice, Jordan will not relent in its effort to defend Muslim and Christian holy sites in occupied Jerusalem and to preserve their identity, as we shoulder our responsibilities under the historical Hashemite custodianship of the holy sites and the special role the Kingdom has towards them.

15. Mr President, Members of the Court, Palestinians are being killed in the hundreds every day in Gaza and in the West Bank because Israel is not being held accountable for its war crimes and violation of international law. Children are undergoing surgery without anaesthesia. Six-year-old Hind was left in the car for days next to the decaying bodies of her relatives whom Israel has killed. When medics finally arrived to rescue her, the Israeli occupation army killed them and killed her. This brutality, that tortured and killed Hind, is a constant reality of life under the Israeli occupation. No more.

16. Rule that this brutality can be no more. Help deliver justice. Rule that the Israeli occupation, the source of all evil, must end.

17. Thank you, Mr President and Members of the Court, and with your permission, I now yield to Dr Ahmad Ziadat, Jordan's Minister of Justice.

The PRESIDENT: I thank His Excellency Mr Ayman Safadi. I now give the floor to His Excellency Mr Ahmad Ziadat. Your Excellency, you have the floor.

Mr ZIADAT:

INTRODUCTION

1. Mr President, Members of the Court, it is an honour to appear before you on behalf of the Hashemite Kingdom of Jordan.

2. There are three sections to my address. *First*, I will identify in overview Jordan's and the Hashemite family's special role and interests in the Christian and Muslim holy sites in Jerusalem for more than 100 years. *Second*, I will share a mere fraction of the more than 3,000 pages of evidence placed before the Court on Israeli violations. *Third*, I will briefly identify the consequences of the Israeli violations.

3. Jordan's Written Submissions and evidence that have been placed before the Court on these matters are adopted herein[99].

I. THE SCOPE AND RECOGNITION OF JORDAN'S ROLE IN THE HOLY SITES

4. Mr President, Members of the Court, Jordan and the Hashemite Royal Family have a special role as the custodians of the Muslim and Christian holy sites in Jerusalem.

5. This special role is of paramount importance to the whole world because it is what keeps the peace and preserves the historic status quo at Jerusalem's holy sites. Jerusalem is holy to Muslims, Christians and Jews — who together make up over 55 per cent of the world's population — and it must be a city of peace. Preserving the historic status quo is the key to that peace and to containing the global religious tensions.

6. In the performance of this role, Jordan administers the affairs of the Muslim holy sites in Jerusalem including their maintenance and restorations[100]. Jordan also takes all measures within its power to protect both the Muslim and the Christian holy sites[101].

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[99] Written Statement of Jordan, Part II.

[100] Written Statement of Jordan, Part II, para. 57.2.

[101] *Ibid.*, paras. 60-64.

7. This special role is historic and internationally recognized, including by the United States, the European Union, Russia, the United Kingdom, the Vatican, the Islamic States and Israel itself[102]. I will briefly highlight its recognition by some of the most directly concerned States and bodies.

8. The final declaration of the Joint Arab-Islamic Summit held this year states:

> "[T]he blessed Al-Aqsa Mosque, . . . with its entire area of 144 thousand square meters, is an exclusive place of worship for Muslims . . . [and it is under the management of the Jordanian Jerusalem Awqaf] within the framework of the historical Hashemite Custodianship of the Islamic and Christian Holy Sites"[103].

9. Article 2 (1) of the Jordan-Palestine Agreement of 2013[104] states:

> "His Majesty King Abdullah II, as the Custodian of the Jerusalem Holy Sites, exerts all possible efforts to preserve the Jerusalem Holy Sites . . . and . . . to represent the interests of the Holy Sites in international forums and competent international organizations through feasible legal means."

10. Israel itself recognized Jordan's special role in the Treaty of Peace between Jordan and Israel of 1994[105]. Article 9 (2) of the treaty provides: "In this regard, . . . Israel respects the present role of the Hashemite Kingdom of Jordan in the Muslim holy shrines in Jerusalem".

11. "In 1924, the Heads of the Churches in Jerusalem pledged allegiance to Sharif Hussein, reaffirming the Hashemite's historic role in safeguarding and protecting Jerusalem Holy Places. The Hashemite Kings of Jordan have performed that role ever since."[106] This allegiance has been repeatedly renewed[107].

12. In 2013, His Holiness Pope Francis wrote to King Abdullah II to acknowledge His Majesty's custodianship. His Holiness stated:

> "I am deeply conscious . . . of His Majesty's international recognized role as Custodian of the holy places of Jerusalem. [T]he care of the holy places of Jerusalem has always been the highest priority of the Hashemite royal family."[108]

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[102] *Ibid.*, paras. 48-65.

[103] Resolution of the Joint Arab Islamic extraordinary Summit, para. 21, https://www.oic-oci.org/docdown/?docID=9922&refID=4279.

[104] Written Statement of Jordan, Part II, exhibit 9, pp. 439-441.

[105] *Ibid.*, exhibit 97, p. 1256.

[106] *Ibid.*, para. 60, footnotes omitted.

[107] *Ibid.*, para. 62.

[108] *Ibid.*, para. 63.

II. ISRAEL'S VIOLATIONS IN THE HOLY SITES

13. Turning to violations, Mr President, Members of the Court, I will share a few examples of Israeli violations in the holy sites since its occupation of East Jerusalem in June 1967.

14. In June 1967, within days of its occupation, Israel demolished the historic Mughrabi Quarter, consisting of 153 houses, and expelled its residents in order to enlarge the space in front of the Al-Buraq western wall for Jewish prayers[109].

15. Further, the Mughrabi Gate Pathway, an ancient earthen ramp leading to the Al-Aqsa Mosque was demolished in 2004 and replaced by a wooden ramp in 2005[110].

16. A serious, and more serious, violation that has been going on for decades is the extensive and systematic digging and tunnelling works around and underneath Al Aqsa Mosque, which threatens its structural integrity[111]. On 10 September 2023, a UNESCO decision criticized Israel for failure to cease these activities and described them as "persistent" and "illegal under international law"[112].

17. In April 2022, during the holy month of Ramadan, the Israeli forces "raided the Al-Aqsa Mosque . . . during dawn prayers and attacked Palestinian worshippers with rubber bullets, stun grenades and tear gas, causing injuries to more than 150 people" and made more than 400 arrests[113]. In the same month, the ancient Qibli Mosque was subject to a similar attack and significant damage was caused to historic glass windows, the *minbar* and the carpet[114].

18. On 13 December 2021 and on 31 March 2023, the Patriarchs and the Heads of Churches of Jerusalem issued a statement expressing their concern that Christians and their holy sites have become the target of frequent and sustained attacks by Jewish radical groups, "with the aim of diminishing Christian presence"[115].

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[109] *Ibid.*, para. 70.

[110] *Ibid.*, paras. 73-75.

[111] *Ibid.*, paras. 83-93.

[112] Available at https://whc.unesco.org/en/decisions/8183/.

[113] Written Statement of Jordan, Part II, para. 106.

[114] *Ibid.*, para. 97.

[115] Available at https://images.app.goo.gl/SFCLaCmwdC6hnoFH7; Written Statement of Jordan, Part II, para. 194.

III. CONSEQUENCES OF THE VIOLATIONS IN THE HOLY SITES

19. Mr President, Members of the Court, Israeli violations in the Muslim and Christian holy sites violate the rules of international law, including Articles 27 and 53 of the Fourth Geneva Convention, as we have stated in depth in our Written Statement[116].

20. Furthermore, Israeli violations of the historic status quo at the Muslim and Christian holy sites in Jerusalem threaten their integrity. They inflame global religious tension and create confrontations along religious lines.

21. Mr President, Members of the Court, thank you for your attention, and I now request that you invite Sir Michael Wood to the podium. Thank you.

The PRESIDENT: I thank His Excellency Mr Ahmad Ziadat. I now give the floor to Sir Michael Wood. Sir, you have the floor.

Sir Michael WOOD:

1. Mr President, Members of the Court, it is a great honour to appear before you and to do so on behalf of the Hashemite Kingdom of Jordan.

2. Mr President, Jordan fully maintains all that it said in its Written Statement and Comments, including the conclusions[117]. And I respectfully refer the Court to those pleadings for details of our position.

3. In the time available, and given the hour, I shall be very brief in addressing six points.

I. AN ADVISORY OPINION WOULD NOT UNDERMINE NEGOTIATIONS

4. *First*, a small number of States have suggested that, in giving its opinion, the Court should take care not to undermine the negotiating framework. Yet both in its 2004 Opinion and in *Kosovo*, the Court rejected, in no uncertain terms, the argument that an advisory opinion could have a detrimental effect on negotiations[118]. Your case law confirms that it is not for the Court to substitute its own views for those of the General Assembly on whether an advisory opinion may have such an impact; there is, moreover, no basis for making such an assessment in the present case. On the

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[116] *Ibid.*, Chaps. 4 and 5.

[117] Written Comments of Jordan, pp. 37-39.

[118] *Wall* Advisory Opinion, p. 160, paras. 52-53; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 418, para. 35.

contrary, as the Court itself said in 2004, any negotiated solution must be achieved "on the basis of international law"[119].

II. ISRAEL MUST RESPECT THE RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION

5. My *second* point concerns the right to self-determination. This right is well established in customary international law and is a norm of *jus cogens*[120], from which there can be no derogation. It goes hand in hand with the obligation to respect the territorial integrity of the self-determination unit[121], as well as the right to permanent sovereignty over natural resources[122].

6. The competent organs of the United Nations have affirmed this right repeatedly over the years, demanding the establishment of a Palestinian State and the realization of the two-State solution[123].

7. Regrettably, Israel's occupation has now lasted for well over half a century. During this period, Israel has intentionally breached fundamental principles of the law of occupation; the raison d'être of these breaches is to deny the right to self-determination of the Palestinian people.

8. The Occupied Palestinian Territory has been progressively fragmented. Its demographic composition has been and continues to be altered. Settlements and "outposts" expand rapidly, while the Palestinian people's access to natural resources is denied and water resources are depleted[124].

9. All this, Mr President, Members of the Court, severely violates the Palestinian people's right to self-determination, including their right to an independent State on the 4 June 1967 lines, with East Jerusalem as its capital. The only way, Mr President, for the right to self-determination to be exercised is for the occupation to come to an end.

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[119] *Wall* Advisory Opinion, p. 201, para. 162.

[120] *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29; *Chagos* Advisory Opinion, pp. 131-133, 139, paras. 148, 151-152, 155, 180.

[121] *Chagos* Advisory Opinion, p. 134, para. 160.

[122] Paragraph 2 of common Article 1 to the ICCPR and ICESCR; UNGA res. 1314 (XIII), 12 Dec. 1958; UNGA res. 1803 (XVII), 14 Dec. 1962.

[123] Written Statement of Jordan, Part I, paras. 4.11-4.14.

[124] Written Statement of Jordan, Part I, paras. 4.19-4.24.

III. ISRAEL'S POLICIES AND PRACTICES VIOLATE THE LAW OF OCCUPATION

10. Turning to my *third* point, Israel's policies and practices also violate the law of occupation, which applies throughout the Occupied Palestinian Territory. Israel has engaged in a policy of progressively establishing settlements and so-called "outposts". Israel's 2018 Basic Law declares: "[t]he State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation"[125]. As others have said, 2023 was a record year for settlement expansion. And just recently, in late January, senior Israeli officials called for resettlement of Gaza and for the expanding settlement in the West Bank[126].

11. Israel's settlements have created a patchwork of territorial units throughout the West Bank; they seek to create facts on the ground and they undermine the establishment of a sovereign, independent, contiguous and viable Palestinian State. As many others have said, they are often accompanied by brutal settler violence, tolerated or even supported by the Israeli authorities; one effect is to instil a sense of terror and fear in Palestinians, leading to displacement from their own land[127].

IV. ISRAEL'S PURPORTED ANNEXATION OF THE OCCUPIED PALESTINIAN TERRITORY IS A SERIOUS BREACH OF *JUS COGENS*

12. This brings me to the *fourth* point: Israel's policies and practices, when considered in their entirety, leave no doubt as to Israel's intention to annex the Occupied Palestinian Territory.

13. The facts speak for themselves: Israel's 1980 Basic Law, which purported to annex Jerusalem *de jure*; the continued construction of the wall in the West Bank despite the Court's 2004 Opinion; the scale, infrastructure and location of Israeli settlements; the expansion of Israel's direct civilian legal authority across the West Bank; and the continued displacement of Palestinians and the difficulties they face to return to their homes[128]. If there were any doubt, the map shown by the Prime

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[125] Basic Principle 7 of Israel's 2018 Basic Law.

[126] See "Israeli ministers join gathering calling for resettlement of Gaza", Al Jazeera, 29 Jan. 2024 (available at: https://www.aljazeera.com/news/2024/1/29/israeli-ministers-join-gathering-calling-for-rebuilding-settlements-in-gaza).

[127] Written Statement of Jordan, Part I, paras. 4.56-4.76.

[128] Written Statement of Jordan, Part I, paras. 4.77-4.84.

Minister of Israel before the General Assembly last September[129], which you have seen earlier this week, and his rejection of the two-State solution[130] confirm Israel's intention to annex.

14. The annexation of any part of the Occupied Palestinian Territory is a serious breach of the prohibition of the acquisition of territory by force — a peremptory norm of general international law.

V. ISRAEL'S DISCRIMINATORY LEGISLATION AND MEASURES AMOUNT TO SERIOUS BREACHES OF FUNDAMENTAL RULES OF INTERNATIONAL LAW

15. Mr President, my *fifth* point is that Israel's discriminatory laws and practices severely affect the lives of Palestinians and demonstrate a total disregard for the occupying Power's duty to protect the rights and well-being of the Palestinian people[131].

16. Specifically, the policy of discrimination constitutes a serious violation of treaty obligations and of customary international law, tantamount to apartheid. The CERD Committee, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have each urged Israel to amend the 2018 "Basic Law" so as to eliminate its discriminatory effects and to ensure equal treatment of all persons within its territory and subject to its jurisdiction[132]. This has not been done.

17. Discriminatory expropriation laws have been supplemented by a vast catalogue of military orders that have little or nothing to do with security or public order. Instead, they permit discriminatory treatment in practically every aspect of daily life — a discriminatory planning régime in which permits are routinely denied to Palestinians; the discriminatory practice of demolitions; and the use of zoning to designate military areas or so-called "nature reserves", access to which is either denied to Palestinians or subject to Israeli permission[133].

18. All of this is backed up by increasingly frequent interventions by Israeli armed forces to suppress protests, often with lethal fire; by the apparent impunity of those who engage in violence

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[129] CR 2024/4, p. 53, para. 13 (Malki).

[130] See, most recently, "Netanyahu boasts of thwarting the establishment of a Palestinian state 'for decades'", *The Times of Israel*, 20 Feb. 2024 (available at: https://www.timesofisrael.com/netanyahu-boasts-of-thwarting-the-establishment-of-a-palestinian-state-for-decades/).

[131] Written Statement of Jordan, Part I, paras. 4.95-4.141; Written Comments of Jordan, paras. 59-63.

[132] Written Statement of Jordan, Part I, para. 4.113.

[133] Written Statement of Jordan, Part I, paras. 4.116-4.125.

against Palestinians; by the use of excessive force; by attacks on health services; and by the ever-increasing arbitrary detention and ill-treatment of Palestinians, including children[134].

19. Further, as explained in our written pleadings[135], Israel has engaged in acts that constitute crimes against humanity and has failed to prevent and punish such crimes.

VI. THE OCCUPATION AS SUCH IS UNLAWFUL AND MUST CEASE

20. Mr President, Members of the Court, I now turn to question (*b*), and to my *sixth* and final point. What the General Assembly asks you to determine is whether the occupation as such is unlawful.

21. Three essential principles should guide the Court in responding to question (*b*). These principles are fundamental to the law of occupation and they reflect *jus cogens* norms.

22. First, occupation is by its very nature temporary. It must not become permanent or indefinite. Second, the occupying Power cannot acquire sovereignty over the occupied territory, whether by annexation or in any other way. Third, the occupying Power has the duty to respect the right to self-determination of the people of the occupied territory, as well as all their human rights[136].

23. Israel's occupation contravenes each of these fundamental principles.

24. Israel's policy of settlements, including the transfer of settlers, the confiscation of land, and the forcible displacement of Palestinian communities, evidences Israel's intention to occupy permanently and to annex territory that belongs to the Palestinian people.

25. Israel's serious breaches of the right to self-determination, the principle of non-acquisition of territory by force, and the prohibition of discrimination — all *jus cogens* norms — leave no doubt that the occupation as a whole is unlawful; the occupation is being carried out for purposes contrary to international law.

26. Mr President, I now turn to the legal consequences arising from the unlawful occupation of the Occupied Palestinian Territory. A principal consequence is that Israel must *end* its occupation of the *whole* of the Occupied Palestinian Territory, that is, the West Bank, including East Jerusalem,

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[134] Written Statement of Jordan, Part I, paras. 4.126-4.4.137.

[135] Written Statement of Jordan, Part I, paras. 4.142-4.173; Written Comments of Jordan, paras. 64-66.

[136] Written Statement of Jordan, Part I, paras. 5.6-5.13.

and Gaza[137]. This must be done, as we said in our written pleadings, as a matter of urgency and as rapidly as possible.

27. Another legal consequence is that all States are obliged not to recognize the unlawful situation created by Israel's policies and practices, and not to render any assistance that may serve to further those policies and practices. The content of these obligations was set out by Palestine on Monday in some detail[138]. States must moreover co-operate with the competent organs of the United Nations to bring the unlawful occupation to an end.

28. A further obligation binds States to investigate, prosecute, and punish any individuals subject to their jurisdiction, for grave breaches of the Geneva Conventions and crimes against humanity.

29. The United Nations, and especially the General Assembly and the Security Council, must take measures to end the illegal occupation, taking due account of the advisory opinion to be given.

30. Before concluding, Mr President, I must emphasize, in the light of what some others have said, that until Israel withdraws from the Occupied Palestinian Territory, it remains obliged to respect in full international humanitarian law and international human rights law. Israel's obligations under these bodies of law continue to apply even though the occupation as such is unlawful[139].

31. Mr President, Members of the Court, that concludes Jordan's submissions and we thank you for your attention.

The PRESIDENT: I thank the delegation of Jordan for its presentation, which brings to a close this morning's hearing. The Court will meet again this afternoon at 3 p.m. to hear Kuwait, Lebanon, Libya, Luxembourg, Malaysia and Mauritius. The sitting is adjourned.

The Court rose at 1.05 p.m.

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[137] Written Statement of Jordan, Part I, paras. 5.14-5.16; Written Comments of Jordan, p. 38, Conclusion (3) *(b)*.

[138] CR 2024/4, p. 94, para. 27 (Sands) and pp. 106-107, paras. 26-27 (Pellet).

[139] Written Comments of Jordan, Part I, paras. 80-82.